

GAHC010193122017



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

**Case No. : CrI.A. 33/2017**

1:MD SOBOR ALI and 3 ORS  
S/O LATE ABU BAKKAR  
2: MD. MOHORAM ALI  
S/O LATE HARUS ALI  
3: MD. HUSSAIN ALI LASKAR @ HUSSAIN ALI  
S/O LATE ABDUL BARI LASKAR  
4: MD. MOINUDDIN LASKAR @ MOINUDDIN  
S/O LATE HARUS ALI  
ALL R/O JAMALPUR FOREST VILL. PART-I UNDER DHOLAI P.S. IN THE  
DIST. OF CACHAR  
SILCHAR  
ASSAM  
VERSUS  
1:THE STATE OF ASSAM and ANR  
2:MD. KALA RAJA  
S/O LATE HARUS ALI  
R/O JAMALPUR FOREST VILL. UNDER DHOLAI POLICE STATION IN THE  
DIST. OF CACHAR  
SILCHAR  
ASSAM

**Advocate for the Petitioner : MR.U CHOUDHURY**

**Advocate for the Respondent : MR.I ALAMR-2**

Linked Case : CrI.A. 41/2017  
1:ABDUL MOTLIB LASKAR @ BOGURI and 2 ORS  
S/O LATE MAINAMAL LASKAR  
2: MOTLIB ALI  
S/O MASADDAR ALI LASKAR  
3: JALALUDDIN @ JALALUDDIN BORBHUYAN  
S/O LATE ABDUL KADIR BORBHUYAN  
ALL ARE R/O VILL. JAMALPAR  
PT-V  
P.S. DHOLAI  
CACHAR

DIST. CACHAR.  
VERSUS  
1:THE STATE OF ASSAM and ANR  
2:KALA RAJA  
S/O LATE HARUS ALI  
R/O JAMALAR  
F.V. P.S. DHOLAI  
DIST. CACHAR  
PIN 788114  
Advocate for the Petitioner : MR.P K DAS  
Advocate for the Respondent :

**BEFORE**  
**HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**  
**HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

**JUDGMENT**

**Date : 01-11-2019**

**1.** Both these appeals arise out of the same Judgment & Order dated 22.12.2016 passed by the Additional Sessions Judge, Cachar in Sessions Case No. 91/2009 and are accordingly taken up for disposal analogously. So far as Criminal Appeal No. 33/2017 is concerned, the appellants are Md. Sobor Ali, Md. Mohoram Ali, Md. Hussain Ali Laskar @ Hussain Ali and Md. Moinuddin Laskar @ Moinuddin whereas Criminal Appeal No. 41/2017 is concerned, the appellants are Abdul Motlib Laskar @ Boguri, Motlib Ali and Jalaluddin @ Jalaluddin Borbhuyan. By the impugned judgment, the appellants are convicted u/s 148/149 of the Indian Penal Code and sentenced to suffer Simple Imprisonment for 6 months; for the offence u/s 323/149 of the IPC to suffer Simple Imprisonment for 3 months; for the offence u/s 324/149 of the IPC to suffer Simple Imprisonment for 1 year and for the offence u/s 302/149 of the IPC to suffer sentence of imprisonment for life and also to pay a fine of Rs. 3,000/- only each in default to undergo Simple Imprisonment for 6 months. The sentence of imprisonment was to run concurrently.

**2.** A brief narration of the facts of the case can be put in the following manner:

**3.** One Md. Kala Raja Laskar (PW-2) had lodged a written ejahar on 29.08.2003

before the Dholai Police Station alleging, *inter alia*, that on the previous day at about 11 AM, 18 nos. of the named accused-persons armed with spears had trespassed on their house in a group and kept them confined. When the informant and the other family members raised hue and cry seeking help, some neighbours tried to rescue but nothing could be done. At about 8 PM, the accused-persons started pelting stones at the house and finding no other way out, the elderly woman - Nepurjan Bibi approached the accused-persons to spare the lives of the informant and his family. At that time, the accused no. 1 inflicted a forceful blow on her chest with a spear (lenza) causing instantaneous death. The accused No. 11 also caused rigorous injuries to the wife of the informant with blow by spear while she was carrying her child on her lap.

**4.** Thereafter the accused-persons trespassed into the house and launched attack with sphere in their hands causing grievous injuries to the elder brother Md. Abdul Sattar, Md. Faizul Haque and Md. Abdul Motlib who were undergoing treatment in the Silchar Medical College. The informant and his son who were pretending to be dead had somehow escaped from the murderous assault. It has further been stated that a case is pending between the informant and four of the accused-persons wherein, investigation was on. Based on the aforesaid ejahar, an FIR was registered being Dholai P.S. Case No. 205/2003 u/s 147/148/149/448/342/336/307/302 of the Indian Penal Code. Upon completion of investigation, the concerned police station had submitted the charge-sheet and the charges being exclusively triable by a Court of Sessions, the case was committed to the appropriate Court. On framing of the charges, the accused having denied their involvement, the trial had begun.

**5.** The informant was examined as PW1. He deposed that on the fateful day i.e. 28.08.2003 when he was working on the paddy field, he heard that his son Moin Uddin had picked up a quarrel with his wife whose parental home was in the vicinity. Thereafter on hearing the aforesaid incident, the father of Moin Uddin had come over and took back his daughter Husna Begum. As there were some verbal altercations, the family members had gathered in the house of Moin Uddin and in the meantime, the accused-persons had assembled. They were armed with various

weapons like ballam, lanja, lathi and dagger and surrounded the house from all sides. The accused-persons did not allow any of the family members of the informant to go out. On hearing the same, though some elderly persons of the village had come to the house of Moin Uddin to settle the matter amicably, no settlement could be reached. After the mediators left the place, the accused-persons started pelting stones on the house of Moin Uddin. At about 7:30-8 PM, the accused-persons trespassed into the house of the Moin Uddin and started pelting bricks, stones and caused damage to the house by bollam, lathi etc. At this, the family members came inside the room and closed the door. Accused Moharam Ali forcibly opened the door and entered the room for assaulting the family members. At that point of time, Nepurjan Bibi requested not to assault. However, accused Sabor Ali gave a lenja blow on the chest of Nepurjan Bibi as a result of which she had died on the spot. Accused Sayar Ali had caused two numbers of injuries and accused Hussain also caused injuries by use of lenja. Accused Faizul Haque dealt Ballam blow on Moharam Ali. A minor boy named Saharul aged about 8 months was also assaulted by accused Anwar Hussain. Accused Silam Uddin inflicted a dagger blow on the hand of Abdul Motlib whereafter Abdul Motlib in the injured condition lifted the dead body of his mother-Nepurjan Bibi and took her to his house. The informant and his son somehow escaped by concealing themselves in a dark place. The FIR was lodged by him on the next date leading to registration of the concerned Dholai P.S. case followed by investigation. The PW1 is also a seizure witness. The aforesaid PW1 was cross-examined. Though certain contradiction was sought to be projected, the statement of PW1 more or less is consistent as he was an eye-witness, no major discrepancies could be extracted from him.

**6.** PW2 Twakul Ali Laskar who was a neighbour of the informant as well as the accused-persons. He deposed that on the date of occurrence while he was going to the Mosque, he had received information about a quarrel. Accordingly, he along with Masabbir Ali had gone to the place of occurrence and found that a quarrel was going on between the informant's family and the accused-persons which the witness had unsuccessfully tried to settle. The said PW2 further deposed that they found Sabor

Ali and Sayar Ali in front of the house and thereafter he had left the place. He learned about the assault only on the next date. He is a witness in the inquest report. The said PW2 was cross-examined but no material inconsistencies could be extracted from him. In fact, it is found that names persons of the locality who had tried to settle the matter are also mentioned in the FIR. Further, PW1 in his deposition had clearly mentioned the name of PW2 who had come to settle the matter. In view of this, there is consistency of the deposition of PW1 and PW2.

**7.** PW3 is Mustt. Lal Bibi who is the daughter of the deceased Nepurjan and wife of informant Kala Raja. The said PW3 was all alone present during the incident at the place of occurrence. She had given a vivid description of the incident which had happened in front of her eyes. The said PW3 was subject to cross-examination to the extent of giving suggestion that her mother had only died by falling which she had denied.

**8.** PW. 4 is Jairul Hoque Laskar who is the grandson of the deceased. This witness who is aged about 25 years clearly deposed that apart from the fact that he was an eye witness to the assault on his grandmother by Sabar Ali, he himself was assaulted by a spear (ballam) by the accused Moinuddin in which he had received injuries on his hand. He had also deposed about the injuries caused to some of the family members.

The said PW. 4 was subjected to cross-examination, however, his deposition remained intact.

**9.** PW. 5 is one Faizul Hq. Laskar who was also an eye witness and deposed that on the instruction of Moram Ali, accused Sabar Ali had struck the deceased Nepurjan Bibi with a lenja and killed her on the spot. The said witness was also assaulted with a ballam on his back for which he had to be admitted in the Silchar Medical College Hospital (hereinafter SMCH) for 15 days. The said PW-5 was subjected to cross-examination to the extent of not being a resident of the place which he had described and the said suggestion was negated by the said PW-5.

**10.** PW. 6 is one Md. Abdul Sattar Laskar who was also an eye witness as well as

sustained injuries in the assault made by the accused persons for which he was also admitted in the SMCH for 7 days. The suggestion that the deceased fell down and died has been totally negated by the said witnesses.

**11.** PW. 7 is one Md. Abdul Matlib who is the son of the deceased and was all along present during the assault. He has stated that his mother (the deceased) was attacked by Sabar Ali on the instruction of Moram Ali killing her on the spot. The said PW. 7 was himself injured in the attack by a ballam. The suggestion that a false case was instituted because of some land dispute has been negated by the said PW.7.

**12.** PW. 8 is one Dr. Gunajit Das who had conducted the Post Mortem examination on the body of the deceased Nepurjan Bibi. According to the opinion of the said PW. 8, death was instantly caused from the stab injuries sustained which were anti-mortem and homicidal in nature.

**13.** PW. 9 is one Dr. Raseshar Chandra Paul who had treated 3 (three) of the members of the deceased family who were injured in the attack. The said PW. 9 specifically named Faizul Hq. Laskar, Md. Abdul Matlib Md. Abdul Sattar Laskar whom he had treated at the SMCH and had also given a report (vide Ext.3). The said Doctor was subjected to cross-examination, wherein, the evidence remained intact.

**14.** PW. 10 is one Putul Bharali who was at the relevant time the Officer-in-Charge of Dholai Police Station. The said PW.10 deposed that on completion of the investigation, he had submitted the Charge-Sheet (vide Ext. 4), and 9 (nine) of the accused were found to be absconding. He had also deposed that initially the investigation was conducted by O.C Jatin Talukdar who had passed away during the course of investigation. In the cross-examination made to the said witness, the defence have emphasized that the investigation was not done by the said PW.10 but his predecessor.

**15.** The Sub Inspector of Police of Dholai Police Station was examined as CW.1. The said witness stated that one NBWA and proclamation was endorsed by him to take into custody accused Atabur Rahman and that he had made several attempts to arrest.

After completion of the PW's and CW, the accused were given an opportunity to explain under Section 313 of the Cr.P.C.

**16.** The learned Addl. Sessions Judge, Cachar vide judgment dated 22.12.2016 had passed the impugned order of conviction and sentence. It is against this judgment that the present appeals have been preferred.

**17.** We have heard B. M. Choudhury, learned counsel for the appellants in CrI. A. No.33/2017 and Mr. B. K. Mahajan with Mr. R. Ali, the learned counsels for the appellants in CrI. A. No.41/2017. Also heard Mr. T. K. Mishra, the learned Addl. Public Prosecutor, Assam for the State respondents.

**18.** Shri Choudhury, the learned counsel for the appellants in CrI. A. No.33/2017 has submitted that for a conviction to be made under Section 149 of the IPC, there is a requirement of common object which in the instant case is not there and therefore, the conviction under the said Section is bad in law.

**19.** Assailing the impugned judgment, the learned counsel submits that though many of the witnesses have claimed to be eye witnesses, there is contradiction in their versions giving rise to grave doubt of their trustworthiness. Further, a reading of the deposition of the so called eye witnesses would reveal that most of the statements were made for the first time in the dock and such statements were never made before the Police while the said witnesses had their statements recorded under Section 161 of the Cr.P.C. Consequently, it is submitted that the versions made by the witnesses in the dock are tutored and planned version.

**20.** Shri Choudhury, the learned counsel, further submits that the except of previous animosity between 2 (two) groups regarding a land dispute for which the present appellants have been falsely accused has been totally over-looked by the learned Court below. By referring to the cross-examination, the learned counsel submits that the foundation in making false accusation due to previous animosity is clearly established in the cross-examination and therefore, the benefit of doubt has to be given to the appellant/ accused persons.

**21.** In support of the submissions Shri Choudhury relies on the following case laws of

the Hon'ble Supreme Court:

- (1) **1996 CRI.L.J.2465** (*Merambhai Punjabhai Khachar and Others-vs-State of Gujurat*);
- (2) **AIR 1999 SC 1620** (*Manoj alias Bhau & Ors-vs-State of Maharashtra*);
- (3) **(2006) 10 SCC 639** (*Bunnilal Chaudhary-vs-State of Bihar*);
- (4) **(2013) 16 SCC 752** (*Ranjit Singh-vs-State of Punjab & Ors.*);
- (5) **(2014) 6 SCC 672** (*Nagesar-vs-State of Chattisgarh*); and
- (6) **(2019) 5 SCC 469** (*Bal Mukund Sharma @ Balmkund-vs-the State of Bihar*).

**22.** In the case of *Merambhai (Supra)*, the Hon'ble Supreme Court held that to invoke the provisions of Section 149 of the I.P.C., the common object is the *Sine qua non*.

**23.** In the case of *Manoj alias Bhau (Supra)*, the Hon'ble Supreme Court had held that same kind of specific overt act is necessary to rope in a co-accused under the ambit of Section 149 of the IPC.

**24.** In the case of *Bunnilal Chaudhary (Supra)*, the Hon'ble Supreme Court had held that to bring in concept of joint liability under Section 149 of the IPC, intention of all the accused persons to commit the offence has to be proved. However, it is to be noticed that the case before the Supreme Court was a case of single blow.

**25.** In the case of *Ranjit Singh (Supra)*, the Hon'ble Supreme Court had held that a common object to commit the offence has to be fully established to apply the provisions of Section 149 of the IPC.

In the said case, there were, however, contradictions, improvement and embellishments which were discernible in the testimonies of the PWs and further the medical evidence did not support the allegations of a murderous assault.

**26.** In the case of *Nagesar (Supra)*, the Hon'ble Supreme Court had held that mere presence or association with other member alone is not *per se* sufficient to hold every one of them criminally liable in the offences committed by others unless it could be



shown that each one also intended or knew the likelihood of the commission of the offence.

**27.** In the case of *Bal Mukund Sharma (Supra)*, the Hon'ble Supreme Court had interfered in a conviction as the evidence on record and circumstances of the case could not conclusively and beyond reasonable doubt show common object being shared by the other accused in the commission of the offence. The Hon'ble Supreme Court had further clarified that a common object has to be determined from the facts and circumstances of each case.

**28.** For ready reference the relevant portion of the judgment of Hon'ble Supreme Court is extracted hereinbelow:-

*“We may now address the aspect of the constructive liability of the accused Kapildeo Chaudhry, Mahendra Rai, Babulal Chaudhry, Bhavesh Chaudhry and Anil Chaudhry for the murder of the deceased. It is well settled that to determine whether an accused, being a member of an unlawful assembly, is liable for a given offence, it needs to be seen whether such act was committed in prosecution of the common object of the assembly, and alternatively whether the members of the assembly knew that the offence was likely to be committed in prosecution of such common object. This, in turn, has to be determined from the facts and circumstances of each case. (See *Dharam Pal v.State of Uttar Pradesh, (1975) 2 SCC 596; Roy Fernandes v.State of Goa, (2012) 2 SCC (Cri) 111*). In the instant case, it is evident that the six accused initially accosted the informant, chased him to his house, and on failing to get a hold on him, set fire to a portion of his house and caught hold of his nephew, the deceased, who was done to death by the accused Brahamdeo. It is thus evident that the murder of the deceased was itself not the common object of the unlawful assembly. Moreover, we find that the act of the accused Brahamdeo of shooting the deceased was sudden, and knowledge of the likelihood of the same could not be attributed to the rest of the accused. Though the other accused had followed the accused Brahamdeo, in our considered opinion, the evidence on record and circumstances of this case could not, conclusively and beyond reasonable doubt, show common object being shared by the other accused, in the commission of the offence of murder by the accused Brahamdeo. It is no doubt true that the evidence on record may create grave suspicion in the mind of the Court about the complicity of the other accused also, with the help of Section 149, IPC, however, such grave suspicion cannot take the place of proof. It is for the prosecution to prove its case beyond reasonable doubt. Even if the evidence on record creates suspicion in the mind of the Court, though grave, the same would not be sufficient to conclude that*

*the other accused are liable to be convicted for the offence under Section 302 along with the accused Brahamdeo, with the help of Section 149, IPC".*

**29.** Shri B. K. Mahajan, the learned counsel appearing for the appellants in Crl. Appeal No. 41/2017 while endorsing the submissions of Shri B. M. Choudhury, the learned counsel for the appellants in the connected Crl. Appeal No. 41/2017 has submitted that the impugned conviction is not sustainable in law inasmuch as, the degree of proof beyond reasonable doubt has not been discharged by the prosecution. He further submits that out of all the appellants, only 2 (two) are presently in the jail and the rest are still on bail which was granted by this Court on being *prima-facie* satisfied with each of the individual case.

**30.** Shri T. K. Mishra, the learned Addl. Public Prosecutor, Assam, on the other hand, has submitted that the present is a case of direct evidence inasmuch as there are more than 4 (four) eye witnesses who were not only present in the place of occurrence but 2 (two) of them were also victims of assault and for which they had to be taken to the Hospital for treatment.

**31.** PW. 1 who was the informant had categorically deposed of having witnessed the deceased being inflicted a forceful blow by a spear (ballam). Though in the ejahar, no name has been taken as to who had inflicted the blow by a lenja. In the cross-examination as PW. 1, he had categorically stated that the accused Sabar Ali dealt a lenja blow on the deceased Nepurjan Bibi. He was consistent in his version made in the Ejahar as well as PW. 1 in deposing that he had concealed himself immediately after the incident and was accordingly saved.

**32.** Shri Mishra, the learned Addl. PP further submits that apart from there being a number of eye witnesses, the fact that the eye witnesses were themselves injured increases their credence and trustworthiness.

**33.** The rival contentions of the learned counsels for their respective parties have been duly considered and the records have been carefully examined.

**34.** It is seen that the present is a case where there are at least 4 (four) eye witnesses who had not only seen the murderous assault upon the deceased but were

also injured in the assault. The description of the injuries made by the witnesses and the weapons used appeared to be consistent with the medical evidence.

**35.** We also finds force in the submissions made on behalf of the State that testimony of persons in a criminal case where such persons is himself injured in the assault bears more weight and are not lightly to be over-looked.

**36.** As regards the submission that Section 149 of the IPC will have no application, this Court is the opinion that the pre-conditions for invoking Section 149 of the IPC are fully met as all the accused persons who had come to attack the house are of one family and had a common object of teaching a lesson to the family of the P.W. 1.

**37.** To appreciate the arguments regarding on applicability of Section 149 of the IPC, the same is extracted hereinbelow:-

*“149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.—If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.”*

**38.** The Hon'ble Supreme Court in a number of cases while laying down the distinction beyond common intention appearing in Section 34 and common object appearing in Section 149 of the IPC has stated that while in the former, a pre concert and meeting of minds is necessary, there is no such necessity for invoking Section 149 of the IPC. The only requirement is that unlawful assembly as defined in Section 141 of the IPC should be there and there has to be a common object of committing the offence. The implication/ culpability of a member of an unlawful assembly is vicarious in nature and it is not necessary that each of the member of the unlawful assembly should commit an overt act. In other words, an offence committed by any member of unlawful assembly will vicariously rope in the other members of the said assembly making him or her liable.

**39.** This Court is unable to accept the proposition advanced on behalf of the appellants that unless an overt act is attributed to each of the members of the

unlawful assembly, they cannot be held to be guilty. Such proposition would not be a correct proposition and would rather defeat the legislative intention of incorporating Section 149 of the IPC.

**40.** From the evidence on record, it is seen that there is no dispute regarding commission of the offence causing death of Nepurjan Bibi by a lenja blow. There is further no dispute that an unlawful assembly armed with various weapons had gathered in place of occurrence since morning and were indulging in number of illegal activities and had ultimately trespassed into the house and committed the offence of murder. The commission of such offence by one of the accused is proved beyond any reasonable doubt by the eye witnesses and there is nothing on record which could be brought out by the defence to disbelieve the said eye witnesses.

**41.** In view of the above, we are of the opinion that the impugned judgment and order dated 22.12.2016 passed by the Additional Sessions Judge, Cachar in Sessions Case No. 91/2009 does not suffer from any infirmity and no grounds could be made out for interference.

Accordingly, the appeals stand dismissed.

We are informed that amongst the appellants, except Md. Sobor Ali and Md. Mohoram Ali, all the other co-accused are on bail. Since the appeals are dismissed, the bail granted to the rest of the appellants stands cancelled and the appellants are directed to surrender themselves before the concerned Superintendent of Police, District Cachar, Assam on or before 11.11.2019 failing which, the authorities would take appropriate action in accordance with law.

**JUDGE**

**Comparing Assistant**