

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 933 OF 2006

ABDUL KARIM . . . APPELLANT
STATE OF ASSAM VERSUS . . . RESPONDENT

WITH
CRIMINAL APPEAL NO. 934 OF 2006
CRIMINAL APPEAL NO. 935 OF 2006

O R D E R

These appeals arise out of a common order dated 7th October, 2005 passed by the Gauhati High Court whereby Criminal Appeals No.342, 351 and 358 of 2003, to the extent the same related to appellants-Md. Mazibur Rahman & Md. Joynal Abedin, Md. Abdul Karim, Md. Sarafat Ali and Md. Nur alias Nurul Islam, have been dismissed and their conviction for offences punishable under Sections 147, 148, 149, 247, 379, 427, 323 and 302 of the Indian Penal Code affirmed.

Appellants-Md. Sarafat Ali and Md. Abdul Karim were

additionally convicted for an offence punishable under Section

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436 of the I.P.C. With the dismissal of the appeals, the
Date: 2015.03.12
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Reason:

sentences of imprisonment awarded to the appellants have

also been affirmed by the High Court which include sentence of life imprisonment under Section 302 of the I.P.C. and lesser sentences for other offences held proved against the appellants. In the case of Md. Sarafat Ali and Md. Abdul Karim additionally convicted for the offence punishable under Section 436 of the I.P.C., the said appellants were sentenced to undergo imprisonment for a period of 10 years with a fine

of Rs.3,000/- each and a default, sentence of six months rigorous imprisonment.

Learned counsel for the parties submits that Md.Sarafat Ali has since passed away. Criminal Appeal No. 934 of 2006 qua Md. Sarafat Ali, therefore, abates and is accordingly dismissed.

Prosecution case, as evident from the order impugned in these appeals is that on 13th July, 1997 at about 4.30 a.m. nearly 100/150 persons armed with Dao (a sharpened-edged weapon), lathi, jong etc. entered the house of the complainant-Md. Abdul Karim-PW.1 and started breaking the walls of his house and looting his wheat and paddy stored in the same besides a pair of bullocks, C.I. sheets. The loot was followed by the house be set on fire destroying the

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paddy-stocks lying therein. The miscreants are then alleged to have taken away Md. Jainal Abedin, Md. Banes Ali and Md. Rajab Ali, tied with a rope, to what is known as Bega river in the neighbourhood of the village where the appellants herein are alleged to have assaulted them with deadly weapons causing death of Md. Jainal Abedin and Md. Banes Ali. Their dead bodies were then thrown in the river. Md. Rajab Ali, the brother of the two deceased, although assaulted with the help of a Dao on his head, managed to escape and return to his village to inform his father-Md. Abdul Hussain about the incident.

The prosecution's further case is that around 8.10 a.m. on 13th July, 1997, a man named Khaden Ali informed the police that some unknown persons, all armed with dao, lathi, spear etc., had trespassed into the house of Abdul Hussain at Paschim Padoghat, assaulted the inmates of the house and looted away the household articles and also taken away his three sons, mentioned above. On receipt of this information, Md. Manour Ali, Assistant Sub-Inspector, posted at Panbari O.P. proceeded towards the place of occurrence. On the way,

he is alleged to have received information that a dead body is

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lying on the bank of Bega river. He, therefore, went to the river side where he was told that the deceased was named Banes Ali s/o. Abdul Hussain. He conducted an inquest of the dead body upon identification by one Majibur Rehman (not the appellant). While returning with the dead body the officer appears to have discovered another dead body of a youth floating in the river under a tree. He handed over the first body to the guard and got the second body recovered with the help of the people in the neighbourhood. He held an inquest of the second dead body upon its identification as the dead body of Banes Ali s/o Abdul Hussain. Loading the two dead bodies on a handcart, the officer is said to have started for the house of the complainant where he recorded the statement of the complainant, according to whose version the assault on the village and his house was mounted by the accused persons on a suspicion that the complainant had cut the embankment across the river. It was also reported that the accused had abducted three sons of the complainant and killed two of them on the bridge over river Bega. The investigation eventually culminated in the filing of a charge-sheet against as many as 19 persons for offences

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punishable under Sections 147, 148, 149, 447, 436, 379, 427, 323 and 302 read with Section 149 of I.P.C. Two of those sent up for trial, were declared absconders, while the third passed away leaving a total of 16 persons who faced the trial before the Court of Addl. Sessions Judge, Darrang, Mangaldoi. At the trial, the prosecution examined 14 witnesses to prove the charges leveled against the accused persons. The trial court eventually found 13 persons guilty, 5 out of them happen to be the appellants before us found who were held guilty of murder and other offences and sentenced to suffer imprisonment for life. The remaining 8 were found guilty for lesser offences punishable under Sections 147, 148, 447 read

with Section 149 of the I.P.C. and sentenced to undergo imprisonment for one year only.

Aggrieved by their conviction and the sentences awarded to them the appellants and other convicts preferred criminal appeals which came to be heard by the Gauhati High Court and disposed of by a common order impugned in the present appeals. The High Court, reappraised the evidence adduced at the trial and upheld the conviction of the appellant and the sentences awarded to them. Criminal Appeals No. 930, 931

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and 932 of 2006 were filed by the co-accused against their conviction for offence punishable under Sections 147, 148, 447 read with Section 149 of the I.P.C. before this Court. In addition, the appellants filed the present appeals challenging their respective convictions and the sentences awarded to them.

By an order dated 25th September, 2014, Criminal Appeals No. 930, 931 and 932 of 2006 were disposed of by this Court upholding the conviction of the appellants in those appeals but reducing the sentence awarded to them from one year to the period already undergone. That left only the present appeals filed by five appellants before us who were convicted for murder and other offences, as already noticed above. Since appellant-Md. Sarafat Ali has passed away, we are primarily concerned with the conviction of appellants-Md. Mazibur Rahman, Md. Joynal Abedin, Md. Abdul Karim and Md. Nur alias Nurul Islam.

We have heard learned counsel for the parties at considerable length who have taken us through the orders passed by the courts below and the relevant parts of the depositions of the material witnesses including the first informant-Md. Abdul Hussain who happens to be the father of the deceased, Md. Rajab Ali who happens to be injured brother of the deceased, Musstt. Sahar Banu, the mother of

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the deceased and Musstt. Mafuza Khatun who happens to be the wife of Md. Rajab Ali, the injured witness. The incident leading to the alleged commission of the offences can, in our opinion, be divided into two distinct parts. The first part of the incident relates to the assault on the home stead of the complainant-Md. Abdul Hussain, the breaking of the walls of his house, alleged looting of the wheat and paddy, bullocks and the burning of the home stead itself. The second part of the very same incident relates to the alleged killing of the two sons of the complainant-Md. Abdul Hussain by the appellants who were alleged to have been taken away by the deceased to the bridge over Bega River assaulted with sharp-edged weapons killed and thrown into the river.

To the credit of Mr. Ankolekar Gurudatta, learned counsel for the appellants who appeared as amicus on behalf of the appellants, we must mention that the first part of the story was not seriously assailed inasmuch as the fact that the appellants were a part of a larger group comprising 100 to 150 persons who appear to have converged at the house of the complainant with a view to causing damage to the house and to set it on fire stands proved. The version of the prosecution witnesses deposing to that part of the case is, in our opinion, fairly consistent and credible and has been rightly accepted by the courts below. The depositions sufficiently prove that among those who trespassed into the home stead of the complainant were the persons identified by the witnesses and eventually tried and convicted by the courts below. The assailants in that part included the appellants herein. To the extent the said part of the incident has been found proved by both the courts below, we see no reason much less a compelling one for our interference especially after we have in the accompanying Criminal Appeals No. 930, 931 and 932 of 2006 already affirmed the order of conviction recorded by the courts below qua the appellants in those

appeals. The only material difference between the cases of those who were appellants in Criminal Appeals No. 930, 931 and 932 of 2006 and the present appeals is that while the appellants in the said appeals were not convicted for the offence of mischief in the FIR punishable under Section 436 of the IPC, appellants-Md Sarafat Ali and Md. Abdul Husain have been found guilty of the said offence also and sentenced to undergo imprisonment for a period of 10 years besides fine and default sentence, mentioned earlier. Having regard to the nature of evidence on record, we see no reason to interfere with the findings recorded by the courts below, insofar as the conviction of appellant-Md. Abdul Karim who is the only surviving convict of the two, or the sentence awarded to him under Section 436 IPC. It follows that to the extent the appellants in the present cases have been convicted for offences punishable under Sections 147, 148, 149, 447, 427 and 379 of the IPC and in the case of appellant-Md. Abdul Karim additionally for offence punishable under Section 436 of the IPC, we have no hesitation in affirming the said conviction and the sentence awarded to the appellant.

We, however, have serious doubts about the correctness of the order recorded by the courts below insofar as the offence of murder punishable under Section 302 of the IPC is concerned. We say so for, among others, three precise reasons. The first and the foremost is that although the first informant was himself a witness to incident in which the deceased - Md. Jainal Abedin and Md. Banes Ali were taken away along with Md. Rajab Ali tied with ropes, his version before the trial court and the FIR lodged by him does not name anyone of them. Nor does it suggest that the deceased were tied with the help of rope or that the deceased and injured-Md. Rajab Ali were dragged from the house, as is suggested in his sworn testimony before the court. When confronted with this vital omission from the FIR, the only

explanation which the first informant has offered is that a white paper was got signed by somebody from him at the arrival of the police in the village. We cannot possibly accept that explanation, not only because the omission of the names in the FIR cannot be lightly brushed aside by any such explanation but also because according to the investigating officer, upon arrival in the village, he had recorded the statement of the informant about the incident. If that were so, there is no reason why the informant should not have named the appellants if they had actually carried the deceased boys, tied with a rope from his house especially when he was familiar with their names and could identify the culprits. The omission of the names of the appellants from

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the First Information Report or from the statement made before the police by the informant in support of the same, is significant and casts a serious doubt upon the veracity of the said version. This is particularly so when according to the prosecution's case Md. Rajab Ali, the third son of the informant who had also been carried along with his two brothers by the appellants, somehow escaped from the clutches of the appellants' to run back to the village in an injured condition. Md. Rajab Ali's presence on his return to the village and his passing the information to his father would have necessarily given to his father-the first informant as also the police first hand information as to what exactly transpired at the bridge over Bega river. If the police got no clue about what actually happened at the bridge either from the father of the deceased or from Md. Rajab Ali, their injured brother, it could only mean that neither Md. Rajab Ali nor the informant had any idea about the deceased having been killed or the persons who killed them. Even otherwise, there is no reason why the police would not have in the first instance itself omitted the names of those responsible for such a ghastly act if the names were actually known or disclosed to them.

The second and equally important circumstance that affects the credibility of the prosecution case in regard to the killing of the two young boys of the informant is that a copy of the First Information Report was received by the Chief Judicial Magistrate of the area concerned after a period of six days or so. There is no explanation forthcoming from the prosecution for the inordinate delay in the dispatch of the copy of the First Information Report to the jurisdictional court. The third and equally significant circumstance is that the statement of Md. Rajab Ali who by far is the only witness to the incident of actual killing of the unfortunate boys was, according to the said witness, recorded two months after the occurrence. The witness has on oath stated that he was examined by the police but only two months after the incident had taken place. We fail to understand how such a statement can possibly be explained by the prosecution when according to the investigating officer himself, the injured-Md. Rajab Ali was examined on the date of the occurrence itself. Even if for a moment one were to ignore the discrepancy in the statement made by the witness and that made by the investigating officer as to the date on which the witness was examined by

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the police, we find that there are material omissions in the statement made by the witness under Section 161 of the Cr.P.C. brought out in the course of his cross-examination which have not been explained by the witness nor by the prosecution. As a matter of fact, from the nature of the contradiction and material omission pointed out in the cross-examination it appears that all material parts of the version given by the witness to the police are different from what has been stated before the court.

Last but not the least is the fact that no independent corroboration of the depositions of Md. Rajab Ali's version. On the contrary, there is a material conflict between his version

that he was assaulted by a Dao (a sharp-edged weapon) on his head which should, in the ordinary course, have caused an incised injury of a very serious nature as the alleged weapon is a sharp-edged weapon but has been interestingly found to cause only a simple injury, as reported by the doctor who examined the witness. We, in the above circumstances, the solitary deposition of Md. Rajab Ali as to the second part of the incident leading to the death of the deceased-Md. Jainal Abedin and Md. Banes Ali near the bridge over Bega river to

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be reliable hence unsafe for us to base a conviction for a capital offence like murder on the same.

In the result, we allow these appeals but only in part and to the extent that while the conviction of the appellants for all other offences found proved against them by the courts below shall stand affirmed and so also the sentences awarded to them for each one of those offences including fine and default sentence, their conviction for the offence of murder punishable under Section 302 of the IPC and the sentence of life imprisonment awarded to them shall stand set aside giving the appellants benefit of doubt. The appeals are, in the above terms, allowed in part and disposed of.

.....J.
(T.S. THAKUR)

.....J.
(PRAFULLA C. PANT)

NEW DELHI;
DATED 26TH FEBRUARY, 2015

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ITEM NO.102	COURT NO.2	SECTION II
S U P R E M E C O U R T O F		I N D I A
RECORD OF PROCEEDINGS		
Criminal Appeal	No(s).	933/2006
ABDUL KARIM		Appellant(s)
VERSUS		
STATE OF ASSAM		Respondent(s)
(With office report)		

WITH CrI.A. No. 934/2006
(With Office Report)

CrI.A. No. 935/2006
(With Office Report)

Date: 26/02/2015 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Appellant(s) Mr. Ankolekar Gurudatta, Adv.

For Respondent(s) Mr. Navnit Kumar, Adv.
For M/s Corporate Law Group

UPON hearing the counsel the Court made the following
O R D E R

In terms of the signed order these appeals are disposed of:

"In the result, we allow these appeals but only in part and to the extent that while the conviction of the appellants for all other offences found proved against them by the courts below shall stand affirmed and so also the sentences awarded to them for each one of those offences including fine and default sentence, their conviction for the offence of murder punishable under Section 302 of the IPC and the sentence of life imprisonment awarded to them shall stand set aside giving the appellants benefit of doubt. The appeals are, in the above terms, allowed in part and disposed of."

(MAHABIR SINGH)
COURT MASTER

(VEENA KHERA)
COURT MASTER

(Signed order is placed on the file)