a© ITEM NO.101 COURT NO.7 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. 1348/2006

MD. BABU MIA Appellant(s)

VERSUS

STATE OF ASSAM Respondent(s)

(With office report)

Date : 16/07/2015 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Appellant(s) Mr. Ravi Prakash Mehrotra, Adv.(A.C.)

For Respondent(s) Ms. Vartika Sahay Walia, Adv.
For M/s Corporate Law Group, Advs.

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

For the reasons recorded in the signed order,

we do not find any merit in this appeal and the

same is dismissed.

[KALYANI GUPTA]
COURT MASTER

[SHARDA KAPOOR]
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE.]

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1348 OF 2006

MD. BABU MIA ..... APPELLANT

VERSUS

STATE OF ASSAM ..... RESPONDENT

O R D E R

Heard Mr. Ravi Prakash Mehrotra, learned Amicus Curiae and Ms. Vartika Sahay, learned Counsel for the State.

2. This appeal by Md. Babu Mia is directed against the common judgment and order dated 22nd December, 2005 passed by the Division Bench of the Gauhati High Court in Criminal Appeal Nos. 196, 243 and 245 of 2004.

3. The appellant's appeal was Criminal Appeal No. 245 of 2004. The appellant was convicted along with three other accused by the trial Court in Sessions Case No. 29 of 2001 for offences under Section 302 read with Section 34 and under Section 325 read with Section 34 IPC. The

appellants before the High Court were inflicted with punishment of life imprisonment with a fine of Rs.20,000/-, in default, further imprisonment for six months for offence under Section 302 read with 34 and a sentence of one year rigorous imprisonment along with a fine of Rs. 1,000/-, in default, further imprisonment of one month for offence under Section 326 read with 34 IPC. The sentences were directed to run concurrently.

4. Before the High Court, though appeals were preferred by the other accused Kumardhan Singh, Md. Liakat Ali, the appeal preferred by Kumardhan Singh before this Court did not survive since pending appeal he died. His appeal was, therefore, dismissed by us having

been abated. As far as the other accused Md.Liaqat Ali was concerned who preferred Criminal Appeal No. 243 of 2004 before the High Court has not chosen to challenge the same before this Court. One other accused by name Amuchaw Mia was also convicted by the trial Court who did not challenge the verdict of the trial Court in the High Court itself.

5. Keeping the above factors in mind, when we refer to the sequence of events which led to the occurrence, we find that on the night of 14th October, 1993, when P.W.

2, Hawtai Mia along with Hawrel Mia (died later) and Abdus Samad who died instantly were all sleeping in the watch house adjacent to the field of Abdus Samad and in the mid night around 15 to 16 miscreants armed with lethal weapons entered into the watch house and are said to have attacked all the three inmates by overpowering them. It is also the case of the prosecution that simultaneously while assaulting, the hands of the victims were tied and were moved to different places and they were further assaulted thereafter also and ultimately the miscreants left the place only after they were convinced that all the three of them had died.

6. After the occurrence, P.W. 4, Nurul Hussain Khan, the brother of the deceased Abdus Samad on finding that his brother did not return home went in search of him and found on the next morning his brother dead in the field with his hands and feet tied up with clothes and injuries all over his body. He also found other two

inmates namely, P.W. 2, Hawtai Mia and the other deceased Hauren Mian in the injured condition who informed him that they were all assaulted by Mafiz Uddin, Babu Mia and the other accused who were proceeded against by the prosecution.

7. F.I.R. came to be registered at 4:30p.m. on 15th October, 1993 and the case was investigated by P.W. 8. According to P.W. 8, both P.W. 2 and the other deceased Hauren Mian came to the Police Station around 10:00a.m. in an injured condition and on noticing their injuries he directed them to go to the hospital for taking treatment and thereafter around 2:00p.m. he visited the place of occurrence after P.Ws. 3 and 4 also reported at the Police Station. It is after the arrival of P.Ws. 3 and 4 F.I.R. stated to have been registered at 4:30p.m.

8. The prosecution mainly relied upon the evidence of P.Ws. 2 to 4 and 8. Apart from the medical reports supported by the Post Mortem Report as well as Exhibits P7 and P8 which were the injury report of P.W.2 and the 161 Statement of deceased Hauren Mian who made the statement immediately on the date of occurrence immediately after the occurrence namely, on 15th October, 1993. That statement recorded as under Section 161 of Cr.P.C. was, however, relied upon as dying declaration of the said deceased Hauren Mian and in support of the said reliance evidence of P.Ws.3 and 4 was also relied upon.

9. When we heard this appeal, Mr. Ravi Prakash

Mehrotra, learned counsel who appeared for the sole appellant stressed that there was enormous delay in the recording of the F.I.R., that the so-called Dying Declaration relied upon under Exhibit P.8 was not proper and that the trial Court failed to note that there was not seen a semblance of truth in the evidence relied upon by the prosecution, that when one of the accused namely, Mafiz Uddin who was also implicated under Exhibit P.8, as well as by other witnesses was acquitted by the trial Court and a common appeal was preferred by the State as against the said acquittal which was rejected, whatever benefit which accrued to the said accused should equally apply to the appellant in the case on hand as well. The learned counsel also pointed out that there was considerable delay in sending the Report to the Magistrate and that there was also no explanation for the said delay.

10. As against the above submissions, Ms. Vartika Sahay, learned counsel for the State submitted that going by the evidence of the injured eye witness P.W. 2, supported by the version of P.Ws. 3 and 4, the reliance placed upon Exhibits P7 and P8 for convicting the appellant along with other accused was perfectly in

order and the same does not call for any interference. The learned counsel submitted that the occurrence took place in a place which is in a hilly terrain with not much facilities for transportation for commuting from one place to another easily or quickly and in the circumstances there was some delay in reporting the occurrence, registering the same or in forwarding the express report. The learned counsel, therefore, submitted that the same should not come in the way in accepting the otherwise reliable material evidence which was fool proof and, therefore, there was no infirmity in the judgment of the courts below to interfere with the same.

11. Having heard the counsel for the parties, we are also convinced that there are enough legally acceptable material evidence for the conclusion reached by the trial Court as well as by the High Court for confirming the conviction and sentence of the appellant as well as the other accused. As was noted earlier, at least two of the accused who were convicted and who are still alive have accepted the verdict and one has chosen not to even appeal before the High Court and the other has chosen not to challenge the impugned order before this

Court.

12. In the forefront, it was argued that based on the very same evidence which was lying as against all the

accused who were arrayed before the trial Court and when Mafiz Uddin was acquitted there was no reason why the other accused should not have been granted the same relief. We can only state as to what was observed by the Court in the impugned judgment. The High Court has noted that the State failed to challenge the acquittal of Mafiz Uddin and refraining from any comment by merely referring to the judgment in Ganga Dhar Behera v. State of Orissa (2002) 8 SCC 381. Obviously, the High Court was clearly constrained but inasmuch as it was felt that in the absence of any exceptional circumstances pointed out the acquittal of Mafiz Uddin cannot be accepted on its own. Therefore, we are also convinced that the said acquittal cannot be a ground for showing any indulgence to the appellant herein.

13. Barring the said factor, when we examined the other part of the evidence, we find that the evidence of P.W. 2, the injured eye witness was clear and while referring to the manner in which the occurrence took place from the start to the end, he narrated the same minutely and

described the incident with particular reference to the names of all the parties who participated and the specific role played, there was no reason to doubt his version. In fact, in the cross examination, as regards the identify of the accused it was brought out that the accused were none other than the cousins of both the deceased and thereby there was no difficulty at all for P.W. 2 to identify the accused. As far as the motive also is concerned, it was clearly stated as to how the appellant and the other accused were seriously aggrieved

in the profit earned by the deceased group in the Agar business i.e. it is stated to be a grass used for getting intoxicated substance and which is smuggled out to other parts outside the State of Assam, where they get substantial price. According to P.W. 2, the earning of about a lakh and fifty thousand for investment of Rs.70,000/- earned by the deceased group was envied by the accused group who were also in the same business which resulted in the elimination of the deceased and suffering of the injury by P.W. 2.

14. The above version of P.W. 2 was a direct evidence which was supported by the versions of P.Ws. 3 and 4. P.W. 4 was the complainant and P.Ws. 3 and 4 were the

persons who met Hauren Mian who died later in the hospital and the deceased Abdus Samad and thereafter P.W. 2 in the field when the other two were in injured condition. According to them, they heard P.W. 2 as well as Hauren Mian reporting to them that it was the appellant and the other accused who were responsible for the assault on them and the instantaneous killing of Abdus Samad. Thereby the version of P.W. 2 was fully corroborated by the version of P.Ws. 3 and 4. With that material evidence on record, when we examined the evidence of P.W. 8 to whom the deceased Hauren Mian made a statement under Exhibit P.8 which was relied upon as his Dying Declaration it was clear that it was the appellant and the other accused who were responsible for the killing. Therefore, the evidence of the prosecution

placed before the trial Court was cogent and categoric in implicating the appellant and the other accused in the offence in which they were involved.

15. In such circumstances, we do not find any infirmity in the judgment of the trial Court as well as that of the High Court. Insofar as the delay in the registering of the FIR, as rightly submitted by Ms. Vartika Sahay, the Court can also take note of the place of occurrence

which is a hilly terrain where movement from one place to another place may not be that easy as it could be in a plain land. Moreover, the evidence of P.W. 8 discloses that Hauren Mian and P.W. 2 reached the Police Station around 10/11:00a.m. on 15th October, 1993 and that noticing the injuries sustained by them, P.W. 8 directed them to first go to the hospital for taking treatment. The said conduct of P.W. 8 cannot be found fault with. Thereafter we find that he also visited the place of occurrence and returned back to the Police Station by 2:00p.m., when P.Ws. 3 and 4 reported to him and narrated the sequence of events which came to be recorded and registered as F.I.R. by 4:30p.m. Therefore, we do not find any infirmity in the registering of the FIR regarding to the occurrence of the incident.

16. The only other submission related to the abnormal delay in forwarding the express report to the Magistrate which was stated to have been made on 20 th

October, 1993 i.e. five days after the registration of the FIR. We have noticed from Exhibit P7 that the place was in the hills and that it was not easily accessible as we find that other facilities such as post office,

telegraph office, air and train facilities were also not readily available which only shows that quick communication of information to different authorities was not that easy. In such circumstances, some allowance should be given for the belated forwarding of the express report to the concerned authority.

17. In any event, having regard to the overwhelming evidence available on record which does not give scope for any doubt in the manner in which the occurrence took place and the participation of the other accused along with the appellant, we are of the view, the minor discrepancies will have to be ignored. We, therefore, do not find any merit in this appeal and the same is dismissed.

18. Fee of the learned Amicus is fixed at Rs. 10,000/-.

.....J
[FAKKIR MOHAMED IBRAHIM KALIFULLA]

.....J
[UDAY UMESH LALIT]

NEW DELHI
JULY 16, 2015.