

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1105 OF 2010

Md. Jabbar Ali & Ors.

... APPELLANT(S)

Vs.

The State of Assam

... RESPONDENT(S)

WITH

CRIMINAL APPEAL NO.1128 OF 2010

Md. Ajmot Ali

... APPELLANT(S)

Vs.

The State of Assam

... RESPONDENT(S)

J U D G M E N T

NAGARATHNA, J.

1. These Criminal Appeals have been filed assailing the common impugned judgment and order dated 21.08.2009 passed by the Gauhati High Court in Criminal Appeal No. 48 of 2007 by which the judgment of conviction dated 29.12.2006 and order of sentence dated

30.12.2006 passed in Special Case No.46 of 2004 by the Court of Additional Sessions Judge, Fast Track Court, Barpeta ('Fast Track Court', for the sake of convenience) has been upheld by dismissing the aforesaid appeals and consequently confirming the conviction of all the accused persons.

2. Since both the criminal appeals arise out of a common impugned judgment, these appeals were heard together and are being disposed of by this common judgment.

3. For the sake of convenience, the parties shall be referred to as per their rank before the Fast Track Court.

4. The Fast Track Court *vide* its judgment dated 29.12.2006 convicted the appellants herein *viz.*, Md. Yunush Ali (accused No.1), Md. Hasan Ali (accused No.2), Md. Omar Ali (accused No.3), Md. Jabbar Ali (accused No.4), Md. Tabibor Rahman (accused No.5), Mustt. Hazerabhanu (accused No.6), Mustt. Chandrabanu (accused No.7), Md. Moyan Ali (accused No.10) and Md. Sahed Ali (accused No.11) [***all appellants in Criminal Appeal No. 1105 of 2010***] and Md. Ajmot Ali (accused No. 8) [***appellant in Criminal Appeal No. 1128 of 2010***].

5. The present appeal *qua* accused No.1 stood abated *vide* order dated 04.10.2010 since he died on 06.11.2009 during the pendency of the aforesaid appeals.

6. By its judgment dated 30.12.2006, the Fast Track Court sentenced accused Nos.4, 10 and 11 to undergo rigorous imprisonment

for life along with a fine of Rs.2,000/- each and in default thereof to undergo rigorous imprisonment for two months more, for commission of offence punishable under Section 302 read with Section 149 of the Indian Penal Code (‘IPC’, for short). Each of these accused have been sentenced to undergo rigorous imprisonment for one year each for the offence punishable under Section 148 IPC, rigorous imprisonment for six months for the offence punishable under Section 323 IPC read with Section 148 IPC and rigorous imprisonment for two months for the offence punishable under Section 447 IPC read with Section 149 IPC. All the sentences were directed to run concurrently.

7. By the same judgment of the Fast Track Court, accused Nos. 2, 3, 6, 7 and 8 were sentenced to undergo simple imprisonment for a period of one year each for the offence punishable under Section 148 IPC, simple imprisonment for six months for the offence punishable under Section 323 IPC read with Section 149 IPC and simple imprisonment of two months for the offence punishable under Section 447 IPC read with Section 149 IPC. All the sentences were directed to run concurrently.

8. By the judgment of the Fast Track Court, accused Nos.1 and 5 were sentenced to undergo simple imprisonment for a period of one year each for the offence punishable under Section 148 IPC; simple imprisonment for one year for the offence punishable under Section 324 IPC read with Section 149 IPC, simple imprisonment for six

months for the offence punishable under Section 323 read with Section 149 IPC and simple imprisonment for two months for the offence punishable under Section 447 IPC read with Section 149 IPC. All the sentences were directed to run concurrently.

9. Currently, all the accused-appellants are on bail. accused No.4 and accused No.10 were granted bail *vide* order of this Court dated 18.08.2017; accused No.11 was granted bail by order dated 03.04.2017 and the accused Nos.2, 3, 5, 6, 7 and 8 were granted bail *vide* order dated 25.10.2010.

10. Succinctly stated, the case of the prosecution is that on 19.11.1999 at about 7:00 a.m. when Md. Baju Mollik (PW-6) had gone to plough his land, an altercation took place between him and accused No.11. At that time, the other co-accused armed with *falla, jong, dagger, lathi* etc. attacked Md. Baju Mollik. Ekkabar Ali, Md. Samad Ali (PW-1) and Jonab Ali (PW-4) came to the place of occurrence whereupon accused No.2 stabbed Ekkabar Ali in the abdomen with a *falla* as a result of which Ekkabar Ali became unconscious and succumbed to his injury shortly thereafter. That accused No.11 stabbed Md. Samad Ali (PW-1) with a *falla* whereas accused No.8 stabbed PW-1 with a fishing prong. Further, accused No.5 stabbed PW-4 with a spear. The other accused were present at the place of occurrence being armed with deadly weapons so that no other person could come and prevent the commission of the alleged offences.

11. An FIR/Ejahaar was lodged by Md. Baju Mollik on 19.11.1999 at about 9:00 a.m. which was registered at Police Station, Barpeta being Case No. 1022/99 under Sections 147/148/149/447/323/324/307/302 IPC.

12. After investigation by the police, a Charge Sheet was submitted against the persons accused of the aforesaid offences.

13. The accused appeared before the Court of learned Additional Chief Judicial Magistrate, Barpeta but as the offence punishable under Sections 307/302 are triable by court of sessions the learned ADJ committed the case to the Court of Sessions, Barpeta. The accused appeared before the Court of Sessions, Barpeta but the case was transferred to the Fast Track Court, Barpeta for adjudication.

14. Thereafter, the accused appeared before the Fast Track Court and faced trial. Charges were framed against the accused for the respective offences and the same were read over and explained to the accused to which they pleaded 'not guilty' and claimed to be tried.

15. The prosecution examined altogether ten witnesses. Thereafter, statements of the accused under Section 313 of the Code of Criminal Procedure, 1973 ('CrPC', for short) were recorded. All the accused denied the alleged occurrence and submitted that they were innocent and had been falsely implicated. The accused also examined two witnesses in support of their defence.

16. The Fast Track Court on considering the evidence on record came to the following conclusions:

- (i) on minutely scrutinizing the evidence of PW-1 and PW-2, it is noted that the evidence of PW-1 lends support to the evidence of PW-2. The evidence of PWs-1 and 2 also finds corroboration with the medical evidence. The presence of these witnesses at the place of occurrence cannot be doubted. The two are injured witnesses in the occurrence and they sustained injuries on the said day. The defence failed to impeach the credibility of these witnesses in so far as the involvement of accused persons is concerned and therefore, evidence of PW-1 and PW-2 are cogent and reliable and the same are trustworthy witnesses. The ocular evidence of these witnesses found corroboration with the medical evidence adduced by Dr. D.C. Sarma (PW-7) and Dr. S.C. Sarma (PW-9).
- (ii) no doubt that there are minor variations in the evidence of PW-6, informant of this case, with the evidence of PWs-1 and 2, but this witness has clearly implicated accused-Sahed Ali which finds corroboration from the evidence of PWs-1 and 2. There is no ground to disbelieve the version of PW-6 as well.
- (iii) the evidence of Inam Ali (PW-3) who is a reported witness, Jonab Ali (PW-4) who sustained injury on his left ring finger during the incident and Hakim Khan (PW-5) who was not an

eye-witness but saw the accused near the place of occurrence, lends credence to the correctness of the prosecution case.

- (iv) the Investigating Officer Biseswar Singha (PW-10) prepared the sketch/map of the place of occurrence and proved the same along with his signature. The sketch/map shows that the place of occurrence is a disputed land. Though, both the informant and the accused have claimed the land, it transpires from the evidence of the prosecution that the disputed land where the incident occurred was in possession of the complainant's party. During investigation, PW-10 also seized the weapon of assault and prepared a seizure list which bears his signature.
- (v) the discrepancies pointed out by the learned counsel for the defence are trivial in nature and cannot be said to have destroyed or demolished the case of the prosecution. The discrepancies are due to normal errors of memory or due to lapse of time. Further, the evidence of the two defence witnesses failed to corroborate the plea of *alibi* taken by the accused.
- (vi) the defence witnesses failed to establish that the persons accused were not present at the place of occurrence at the time of the incident and that they did not kill the deceased person. The reports of the doctor show that the deceased was killed at

7 or 8 a.m. and the FIR was lodged promptly. All the accused were named in the FIR. The parties were known to each other. Thus, it is proved that all the accused came to the place of occurrence being armed with deadly weapons such as *falla*, *lathi*, *surki*, etc. by forming an unlawful assembly. Out of them, accused Md. Sahed Ali, Md. Jabbar Ali and Md. Hasan Ali assaulted PW-1 with a blunt object; accused-Md. Yunush Ali and Md. Tabibor Rahman assaulted PW-2 with a sharp pointed weapon; accused-Md. Ajmot Ali assaulted PW-4 and accused Md. Sahed Ali assaulted PW-5. accused-Md. Jabbar Ali, Md. Sahed Ali and Md. Moyan Ali gave a fatal blow to Ekkabar Ali as a result of which he died. The weapons used by the accused were dangerous weapons which clearly indicate that the accused had an intention to kill Ekkabar Ali. Thus, all the accused were held guilty and were convicted and sentenced by the Fast Track Court as has already been mentioned above.

17. In the criminal appeal filed by the accused before the High Court, on considering the submissions made on their behalf as well as the State, the High Court noted as under:

- (i) the evidence of PW-1, PW-2 and PW-5 make it clear that to prevent PW-6 from ploughing the land where the occurrence took place, the accused had come to the land in question

armed with dangerous weapons like *lathi*, fishing prong, *falla and surki*. An assembly of the accused persons (who were more than five) was formed on the day of occurrence and deposition of these witnesses make it clear that the persons accused had intended to take possession of the land on which PW-6 was ploughing and to prevent him from further ploughing the land. The prosecution has successfully established formation of an unlawful assembly with a common object.

- (ii) the evidence of PW-1, PW-2, PW-5 and PW-6 make it clear that when the deceased Ekkabar Ali tried to intervene in the matter, injuries were caused on his abdomen with a sharp weapon, resulting in his death and the same were caused at the instance of accused-Md. Sahed Ali. The causing of injuries was in furtherance of the common object of unlawful assembly formed by the accused persons. While it is correct that the evidence of the witnesses are at variance as regards which one of the accused had inflicted injury on the abdomen of the deceased, the said fact will not be very relevant if liability is otherwise attributable by virtue of the provisions of Section 149 of the IPC. Thus, it was held that Md. Jabbar Ali, Md. Sahed Ali and Md. Moyan Ali, being members of an unlawful assembly were liable for causing the death of (deceased) Ekkabar Ali.

- (iii) it is an established principle of law that evidence tendered by different prosecution witnesses have to be considered as a whole and such evidence cannot be put in different compartments and considered separately. The appreciation must be of the totality of the evidence brought on record by different witnesses. While it is correct that PW-6 had implicated only four of the accused persons, the evidence of the said witness cannot be construed to be another version of the prosecution case. The evidence of PW-6 is supplementary and not in derogation of the evidence of other prosecution witnesses examined in the present case.
- (iv) the injuries suffered by PW-1, PW-2, PW-4 and PW-5 are fully corroborated by the evidence of PW-7 and PW-9 as well as the reports of the injuries exhibited by the prosecution witnesses.
- (v) the evidence of PW-10 established that PW-6 had given the land for cultivation on '*adhi*' basis and that the accused person's right to possess the land is also not established.
- (vi) there was no fault with the conviction and sentence of the accused passed by the Fast Track Court under Section 447 of IPC read with Section 149 of IPC. That when all the persons accused in the instant case had formed an unlawful assembly and the death of Ekkabar Ali was on account of injuries caused by some members of the unlawful assembly, the Fast

Track Court convicted only three out of eleven accused under Section 302 of IPC read with Section 149 of IPC and the others were acquitted of the said charges. That the reason for such acquittal was not clear, however, since the acquittal of the said accused was not challenged, the High Court refrained from getting further into the said question.

(vii) the judgment and sentence passed by the Fast Track Court in respect of each person accused was thus upheld and affirmed wholly.

18. We have heard Sri Raj Kishor Choudhary, learned counsel for the appellants-accused and Sri Shuvodeep Roy, learned counsel for the respondent-State and perused the material on record.

19. Learned counsel for the appellants submitted that the High Court was not right in confirming the judgment of conviction and sentence passed by the Fast Track Court. The counsel for appellants further contended that the impugned judgments of the Courts suffer from legal as well as factual infirmities and the findings therein are perverse and are to be set-aside and the appellants are liable to be acquitted.

20. The details of the submissions put forth by the learned counsel for the appellants-accused can be epitomised as under:

20.1 there was no evidence to show any alleged unlawful assembly, rioting, murder and all the alleged offences have been falsely fabricated by the Investigating Officer-Biseswar Singha (PW-10).

The case of the appellants is that they were neither present nor participated in the alleged occurrence.

20.2 the investigation by PW-10 was not done as required by law. It was urged by the counsel for the appellants that the prosecution stated that 100 to 150 people gathered at the place of occurrence. However, the prosecution failed to examine any independent and impartial witness. The witnesses examined were under the influence of PW-10 who falsely implicated the appellants. Further, the witnesses, PW-1 to PW-6, who were examined by the prosecution, were related to each other. There are material contradictions in the contents of the FIR and depositions made by the witnesses. The charge sheet submitted by PW-10 did not bear his signatures. The land documents of the appellants were not verified by PW-10 as the same was essential to do so. PW-10 has been negligent in performing his duty and did not carry out the investigation in a proper manner.

20.3 the Courts below failed to note that dispute pertained only regarding land and the ingredients of offence under Section 149 of the IPC were not made out and, as such, the conviction was bad in law. Since the offence under Section 149 of the IPC was not made out, accused Nos. 4, 10 and 11 could not have been convicted under Section 302 of the IPC. There is no clear version as to who gave the fatal blow to the deceased.

20.4 the Courts below ought to have considered the cardinal principle of the administration of criminal justice i.e., presumption of innocence of the accused. In the present case, nothing was proved beyond reasonable doubt and the Courts below were not justified in depriving the accused persons of the benefit of doubt.

21. *Per contra*, learned counsel appearing for the respondent-State supported the impugned judgment and order passed by the High Court and the Fast Track Court and contended that the Courts below have rightly perceived and assessed the evidence on record.

22. The submissions of the learned counsel for the respondent-State can be summarised as under:

22.1 the present case is a case of clinching evidence and the involvement of the accused in the offence has been proven beyond reasonable doubt by the prosecution on the strength of the depositions of injured eye-witnesses being PW-1, PW-2, PW-4 and PW-5 which has been corroborated by medical evidence duly proved on record.

22.2 both the Courts below have concurrently held that the minor discrepancies in the deposition of PW-6 does not demolish/destroy the consistent depositions of PW-1, PW-2, and PW-5. The same is actually supplementary and not in derogation of the evidence of other prosecution witnesses. The discrepancy regarding who stabbed the deceased does not negate the value

of the testimonies of PW-1 and PW-2 as it does not go to the root of the matter. As long as the evidence contains a ring of truth, it cannot be discarded on account of existence of discrepancies. The learned counsel for respondent-State contended that this Court has settled the principles relating to treatment of evidence when discrepancies are alleged and relied on the judgments of this Court in (i) ***Sohrab v. State of Madhya Pradesh (1972) 3 SCC 751***, (ii) ***Bharwada Bhoginbhai Hirjibhai v. State of Gujarat (1983) 3 SCC 217***, (iii) ***State of U.P. v. M.K. Anthony (1985) 1 SCC 505***, (iv) ***Prithu @ Prithi Chand v. State of Himachal Pradesh (2009) 11 SCC 588*** and (v) ***State of Madhya Pradesh v. Chhaakki Lal (2019) 12 SCC 326***.

22.3 the plea of *alibi* as claimed by the accused has not been sufficiently proven by the defence. It was contended by the learned counsel for the State that in respect of plea of *alibi*, Section 11 and Section 103 of the Evidence Act, 1872 are relevant. Further, the plea of *alibi* must be proved with absolute certainty so as to completely exclude the possibility of the presence of the person concerned at the place of occurrence. Neither DW-1 nor DW-2 confirmed the presence of accused Md. Sahed Ali in his house or the alleged incident of dacoity at his *alibi*. The *alibi* is weak and does not create a contradiction to the facts presented by the prosecution. Learned counsel for the

respondent-State placed reliance on ***Dudh Nath Pandey v. State of Uttar (1981) 2 SCC 166***, ***Jitender Kumar v. State of Haryana (2012) 6 SCC 204*** and ***State of Maharashtra v. Narsingrao Gangaram Pimple (1984) 1 SCC 446***.

23. Having heard the learned counsel appearing for the respective parties, the following points would arise for our consideration:

- (a) Whether the High Court was justified in confirming the judgment of conviction and sentence awarded to the appellants-accused by the Fast Track Court?
- (b) Whether the judgment of the High Court calls for any interference or modification by this Court?
- (c) What order?

24. Before proceeding further, it would be useful to recall the approach to be adopted while deciding an appeal against conviction by the Trial Court as well as by the High Court.

25. Section 374 of the CrPC deals with appeals from convictions. Though it is a settled law that this Court shall not reassess the evidence at large and come to fresh opinion as to the innocence or guilt of the accused so as to interfere with the concurrent findings of the Courts below, however this Court may interfere in certain cases. One such case is when there has been an improper reception or rejection of evidence, which, if discarded or received would leave the conviction unsupportable. This Court may also interfere in a case where there has

been a misreading of vital evidence or the Court omits to notice the important points in favour of the accused. **{See Saravanabhavan v. State of Madras AIR 1966 SC 1273}**

26. Where the finding of fact by the High Court is perverse, inadequate and had resulted in miscarriage of justice, this Court may itself hear the appeal on the evidence instead of remanding the case to the High Court for a reconsideration of the evidence when the latter course would lead to unnecessary delay or hardship. **{Kashmira Singh v. State of Madhya Pradesh AIR 1952 SC 159}**

27. In order to appreciate the arguments advanced by the learned counsel for the rival parties and to determine the correctness of the conclusions recorded in the judgments passed by the High Court and the Fast Track Court, it will be necessary to discuss the evidence adduced by the witnesses examined by the prosecution as well as the defence.

28. PW-1- Md. Samad Ali, is one of the persons allegedly injured in the occurrence. The deceased Ekkabar Ali was his cousin (paternal uncle's son). According to him, at about 7:00 a.m. on the day of occurrence, PW-6 had gone to plough his field when Md. Sahed Ali took the other accused persons to the field of PW-6. Seeing the persons accused go to the field of PW-6, PW-1 along with the deceased Ekkabar Ali, PW-2 and PW-3 also came to the field. As per this witness, Md. Sahed Ali exhorted the rest of the accused to assault the other persons

whereupon accused Md. Ajmat Ali stuck PW-1 in the left arm with a fishing prong whereas accused Md. Hasan Ali tried to stab him in the abdomen with a *falla*, as a result of which he sustained injury in his left hand. This witness further deposed that Md. Jabbar Ali stabbed the deceased Ekabbar Ali in the lower abdomen with a *surki* (spear) whereupon the deceased fell down. PW-1 also deposed that injuries were caused to PW-2 and PW-4 and that injured Ekkabar Ali was taken to the house of Barek Bepari where he died. In his cross examination, PW-1 stated that his house is situated at a distance of half a kilometer from the place of occurrence and that Md. Sahed Ali had forcibly taken possession of the land on which the occurrence took place. PW-1 stated that PW-6 is the husband of his niece. PW-1, in his cross examination, further stated that the police did not interrogate him at the place of occurrence. He further stated that some 15-20 people were present at the place of occurrence and that PW-6 was ploughing Md. Sahed Ali's land. The quarrel took place when Md. Sahed Ali objected to the said act of ploughing his field. PW-1 stated that he did not tell the police about Mr. Jabbar Ali stabbing him in the arm and that Md. Ajmot Ali did it. As per his statement in the cross-examination, he did not tell the police that Md. Tabibor Rahman stabbed him in the right arm. PW-1 stated that he did not tell the police about Md. Jabbar Ali stabbing Ekkabar Ali since the police did not ask him. In his cross-examination, PW-1 stated that it was only when Ekkabar Ali's body was taken from

the place of occurrence that he came to know about Md. Jabbar Ali stabbing Ekkabar Ali. PW-1 further refused that he had any land near PW-6's land or Md. Sahed Ali's land.

29. PW-2- Md. Baseruddin is another witness who got injured in the course of the occurrence who has stated that deceased Ekkabar Ali was his paternal uncle and that at about 7:00 a.m. while walking on the road, he heard a hue and cry at the place of occurrence. When PW-2 reached the spot of occurrence, he found all the accused persons present with *lathi, falla, hanna, surki* etc. and the accused persons were quarrelling with PW-6 over ploughing the land. PW-2 deposed that he had requested the parties not to quarrel. He deposed that at the time of incident, Md. Sahed Ali exhorted the other accused to stab PW-2. The deceased Ekkabar Ali was in front of him and that Md. Moyan Ali caught hold of Ekkabar Ali while accused Md. Jabbar Ali stabbed Ekkabar Ali in the lower abdomen with a *surki*. He deposed that accused Md. Yunush Ali hit him on the upper dorsal side of his right hand with a *faska* whereas accused Md. Tabibor Rahman had struck him with a *falla* on the upper dorsal side of his left hand. By seeing this he fled away from the place of occurrence. The accused Md. Ajmot Ali and Md. Hasan Ali injured PW-1 on his hand and arm. That Ekkabar Ali was carried to the house of Barek Bepari where he died and that he underwent treatment for his injuries. In his cross-examination, the place of occurrence of the incident belonged to one Rezzak Ali and that

the *patta* is in his name. He stated that he had no knowledge whether the name of accused Md. Sahed Ali was mutated in the *patta* or not. He rushed to the place of occurrence after 10-15 minutes wherein 50-60 people gathered there. PW-2 stated Ekkabar Ali sustained injury in the right side of his lower abdomen and that he sustained only one injury. PW-2 further stated in his cross-examination that he did not know if the people were aware of this incident.

30. PW-3-Md. Inam Ali is the brother of deceased Ekkabar Ali who deposed that at about 7:00 a.m. on the day of occurrence, when he had been ploughing the field, a young boy came and informed him of the incident. He deposed that he went to the place of occurrence and found his elder brother Ekkabar Ali lying dead. According to him, PW-4 informed him that Md. Moyan Ali had killed Ekkabar Ali and further that PW-4 and PW-1 were injured by Md. Ajmot Ali. Immediately, on his arrival at the place of occurrence, the accused persons ran away from there. In his cross-examination, PW-3 stated that the land on which occurrence took place is an annual *patta* land and that he did not know the *dag* and *patta* numbers of the land. He refused that he knew the boundaries of the land. He stated that he had also seen some Moslem ploughing the field on which incident took place and that he had been ploughing his land which some 2-3 bighas away from the place of occurrence. On his arrival on the place of occurrence, he did not notice who were present there and that the accused persons ran

away. The accused persons have separate homesteads. PW-3, in his cross-examination further stated he told the police that PW-4 told him that Md. Moyan Ali assaulted Ekkabar Ali. The two parties fought over possession of land and that on the day of occurrence itself, Md. Sahed Ali filed a case against them (Jonab, Raju Mallik and Baser) alleging looting of his house

31. PW-4-Md. Jonab Ali is another brother of the deceased. He deposed that at about 7:00 a.m. on the day of occurrence, he was ploughing his land which is at a short distance from the place of occurrence. Seeing 100-150 people gathered at the place of occurrence, he went to the place of occurrence. Md. Ajmot Ali tried to hit him with a *faska*, as a result of which, he fell on the ground and on standing up he saw 4-5 men carrying Ekkabar Ali. He also saw injury on the abdomen of Ekkabar Ali who, according to him, was assaulted by Md. Hasan Ali. In his cross-examination, he stated that deceased Ekkabar Ali and PW-6 had a quarrel over possession of the land. He did not see injury on anyone at the place of occurrence except for on Ekkabar Ali. As per this witness, PW-2 came to the place of occurrence afterwards. He did not know the name of the persons who told him that Md. Hasan Ali had assaulted Ekkabar Ali and that he did not tell that to the police. In his cross-examination, PW-4 makes a mention of some other quarrel that took place between the two groups at some place 10-15 bighas away from Md. Sabed Ali's house. He also made a mention of the case

filed against them alleging dacoity being committed by them in Md. Sabed Ali's house. In his cross-examination, PW-4 stated that he cannot say if the accused persons were present at the place of occurrence. PW-1 and PW-3 are his brothers and PW-6 is the husband of his niece.

32. PW-5- Md. Hakim Khan, who is the brother-in-law of deceased Ekkabar Ali, in his deposition stated that at about 8:00 a.m. on the day of occurrence, he was going home on a bicycle after purchasing some fertilizer. As per this witness, Md. Sahed Ali, Md. Tabibur Rahman, Md. Sabed Ali, Mustt. Chanderbhanu, Mustt. Hazarabhanu and Md. Yunus Ali came together towards him and said 'Ekkabar Ali' is finished. Catch this one'. According to him, Md. Sahed Ali hit him on his right shoulder with a *lathi*, as a result of which, he fell down and became unconscious and was taken to the hospital by his eldest son Anowar Khan, son-in-law and his wife. PW-5 stated that Ekkabar Ali sustained injuries in his right kidney. In his cross-examination, this witness stated that he was attacked and injured near the house of one Jittu Ali at Keotpara. The incidents of assault took place at two places. the distance between the places where he was attacked and Ekkabar Ali was killed is one furlong. This witness stated that he did not know what the rest of the accused persons had done other than running towards him and attacking him. The cause of quarrel was unknown to him. In his cross-

examination, this witness stated that he did not tell the police about the accused persons assaulting Ekkabar Ali.

33. PW-6- Bajju Mollik, the first informant, deposed that on the morning of the day of occurrence, at about 7:00 a.m. when he was ploughing his land, the accused, namely, Md. Sahed Ali, Md. Sabed Ali, Mustt. Hazerabhanu and Mustt. Chandrabhanu came to the land and asked him not to plough the same. An argument took place over the said issue. As per this witness, at that time, deceased Ekkabar Ali was going along the road to his place of work. PW-6 called Ekkabar Ali to his land and the latter asked the accused persons not to quarrel with PW-6. PW-6 deposed that at that time, Md. Sahed Ali ordered that Ekkabar Ali should be assaulted and therefore Md. Sabed Ali, Mustt. Hazerabhanu and Mustt. Chandrabhanu held Ekkabar Ali tightly while Md. Sahed Ali stabbed him in the abdomen with a *falla*. As per his deposition, there was an attempt to assault him also but he ran away. While running away, he met PW-4 and informed him of the incident. PW-6 also informed the villagers regarding the said incident and on returning to the place of occurrence, he found Ekkabar Ali lying in the field in an injured state. In his cross-examination, he stated that he was ploughing was his own land however he did not know the *dag* and *patta* of his own land. He stated that he had seen only accused Md. Sahed Ali, Md. Sabed Ali, Mustt. Hazerabhanu and Mustt. Chandrabhanu and none others at the place of occurrence and he

informed the same to PW-4 when he was running away. After 10-15 minutes, he returned to the place of occurrence and saw only aforesaid 4 accused persons and no other person. He stated that there was only Ekkabar Ali and him on the place of occurrence. He also deposed in his cross examination that he did not know if any other man sustained injuries. He stated that Md. Sayed Ali had asked him not to plough the field. The said land was given to him by his maternal uncle Md. Rezzak Ali however he has not obtained mutation in that respect. This witness stated he did not tell the police about accused Md. Sayed Ali stabbing PW-1 with a *falla*. According to him, PW-1 held it with his hand and as a result of that, he sustained injury in the hand. He also stated that he did not tell the police that Md. Yunus Ali had injured PW-2 and that Md. Hasan Ali injured Ekkabar Ali. He did not know of any incident happening near Md. Sayed Ali's house. He denied that the land where the incident took place belonged to Md. Sahed Ali. He even stated in his cross-examination that he cannot say as to who assaulted whom. This witness also deposed in his cross-examination that the deceased Ekkabar Ali was his maternal uncle-in-law.

34. PW-7- Dr. D.C. Sarma who was working in Barpeta Civil Hospital, deposed that on 19.11.1999, he examined PW-1, PW-4 and PW-5. The report was prepared and signed by PW-7 and was exhibited by the prosecution as Ext.2,4, and 3 respectively. The injuries as mentioned

in the injury reports were simple and were found to be caused by a blunt weapon.

35. PW-8- Dr. P.N. Uzir conducted post-mortem examination on the dead body of Ekkabar Ali. The post-mortem report Ext.5 indicated that one stab injury was found on the left side of the lower abdomen and that the rupture of the peritoneum was found along with perforation of the large intestine. As per the opinion of the doctor, the cause of death was shock and haemorrhage due to the injury sustained. Only one injury was found on the body of the deceased. In his report, he stated that the injury might have been caused by a sharp weapon.

36. PW-9-Dr. S.C. Sarma had examined PW-2 at Barpeta Civil Hospital on 19.11.1999 and in his report, Ext.6, it was mentioned that he found two small punctured injuries at the dorsal of the right hand. The injuries were simple and caused by pointed weapon.

37. PW-10-Biseswar Singha is the Investigating Officer in the instant case who deposed that PW-6 lodged a written Ejahar. He stated that he registered the complaint, interrogated the complainant, visited the place of occurrence, questioned the witnesses and drew a sketch/map- Ext.7 of the place of occurrence along with his signature- Ext.7(i). He deposed that he seized a 10 feet 7 inches bamboo pole fitted with 9 inches long pointed iron prong, 9 inches long iron *falla* fitted to a 2 feet 11 inches long bamboo pole and an 11 feet 2.5 inches long bamboo pole fitted with 14-inch-long pointed iron *falla* vide seizure list- Ext.9

along with his signature- Ext.9(i). Ext.10 (1) is the signature of Inspector Tanu Hazarika. As per this witness, he sent the body of the deceased Ekkabar Ali to the Barpeta Civil Hospital for autopsy and on completion of the investigation, he submitted a chargesheet against the accused. In his cross-examination, he stated that the incident took place on Muslimuddin's land and that he did not verify the land documents of PW-6 i.e., the first informant and of the accused persons. In the diary, there is no mention that the accused Sayed Ali's house was ransacked. The chargesheet did not bear his signature. In his cross-examination, PW-10 stated that he did not see the articles seized by him in the court on the day of his deposition. He further stated that he did not examine Anowar Khan as a witness. PW-10 stated that PW-6 and PW-4 told him about the incident.

38. The accused examined two witnesses. DW-1- Phul Khatun in his examination-in-chief, deposed that a quarrel took place in the house of Md. Sahed Ali, over some land, about 4-5 years ago. DW-1 however stated that she could not say whether at the time of occurrence, Md. Sahed Ali was present or not. DW-1 stated that she had not seen the occurrence of the incident. In her cross-examination, DW-1 deposed that she was not present at the time of the occurrence.

39. DW-2- Md. Abu Ahmed, in his witness, deposed that on coming to know of the arrival of the police at the place of occurrence, he had gone there and found the dead body of Ekkabar Ali lying in the

courtyard of the house of Barek Bepari. In his cross-examination, this witness stated that he was not present at the time when deceased Ekkabar Ali was killed.

40. On reappraisal of evidence of the prosecution witnesses, it is noted that PW-1 who is one of the injured witnesses has stated that on the fateful day, it was Md. Sahed Ali who exhorted the other accused to assault and as a result of the said exhortation Md. Jabbar Ali stabbed Ekkabar Ali in the in the lower abdomen with *surki* (spear) whereupon the deceased fell down. PW-2 has also stated that Md. Moyan Ali caught hold of Ekkabar Ali while accused Md. Jabbar Ali stabbed Ekkabar Ali in the lower abdomen with a *surki*. That Md. Yunsh Ali hit him on the upper dorsal side of his right hand with a *falla* and Md. Tabibur Rahman had struck him with a *falla* on the upper dorsal side of his left hand. As a result, he fled from the place of occurrence. PW-3-Md. Inam Ali is not eye witness but on information has deposed that he went to the place of occurrence of the incident and found Ekkabar Ali lying dead. According to this witness who is a hearsay witness, PW-4 informed him that Md. Moyan Ali had killed Ekkabar Ali. PW-4 further stated in his evidence that he saw the injuries on the abdomen of Ekkabar Ali who, according to him, was assaulted by Md. Hasan Ali. But he has not stated that he had seen Md. Hasan Ali assaulting Ekkabar Ali. Also, PW-5-Md. Hakim Khan has deposed that Md. Sahed Ali hit him on his right shoulder with a

lathi and as a result he fell down and became unconscious and was taken to the hospital. He has also not stated as to who assaulted Ekkabar Ali. Similarly, PW-6-Baju Mollik, the first informant has stated that on the exhortation of Md. Sahed Ali, Md. Sabed Ali, Mustt. Hazerabhanu and Mustt. Chandrabhanu held Ekkabar Ali tightly while Md. Sahed Ali stabbed him in the abdomen with a *falla* and as there was an attempt to assault him also, he ran away. While running away, he met PW-4 and informed him of the incident. Thus, PW-4 is also not an eye witness of the incident as they were not present at the time when Ekkabar Ali was assaulted.

41. On an analysis of the evidence produced by both the parties, what emerges is that there are variations in the evidence of PW-6 who was the first informant in the instant case and the evidence of PW-1, PW-2 and PW-4 regarding as to who gave the fatal blows to deceased Ekkabar Ali. As per the deposition of PW-6, accused Md. Sahed Ali stabbed the deceased Ekkabar Ali in the abdomen with a *falla* while as per the deposition of PW-1 and PW-2, accused Md. Jabbar Ali stabbed Ekkabar Ali in the lower abdomen with a *surki*, whereafter he fell on the ground and was later taken to house of Barek Bepari where he succumbed to his injuries. But, PW-1 has admitted in his cross examination that he had not told the police about Md. Jabbar Ali stabbing Ekkabar Ali and when the latter's body was being taken from the place of the occurrence, he came to know that Md. Jabbar Ali had stabbed Ekkabar

Ali. PW-4 deposed that Md. Moyan Ali had killed Ekkabar Ali. From the evidence of the witnesses, what emerges is that there is no consistency in the depositions of the aforesaid witnesses as to who amongst the accused persons gave a fatal blow to the deceased Ekkabar Ali. When it is not clear as to who stabbed the deceased Ekkabar Ali, the finding of the Fast Track Court, that the evidence of PW-6 finds corroboration with the evidence of PW-1 and PW-2 is erroneous and cannot be sustained. The Fast Track Court as well as the High Court ought not to have relied on the evidence of these witnesses which are highly inconsistent with each other in holding the concerned accused guilty.

42. The evidence of PW-3, who was the brother of the deceased, also does not support the case of the prosecution since PW-3 was not an eye-witness but was merely a hearsay witness who, in his deposition, categorically stated that while he was ploughing his field, a young boy came and informed him about the incident. After hearing about the incident, this witness rushed to the place of occurrence and saw the dead body of the deceased Ekkabar Ali. Further, in his deposition, PW-3 also stated that he was informed by PW-4 that accused Md. Moyan Ali stabbed the deceased Ekkabar Ali and that PW-1 and PW-4 were further injured by the accused Md. Ajmot Ali. On examining the deposition of this witness PW-3, it is clear that the same is not corroborated by the evidence of any other witness such as PW-1 and PW-2 who stated that accused Md. Jabbar Ali stabbed the deceased

Ekkabar Ali and PW-6 who stated that accused Md. Sahed Ali stabbed the deceased Ekkabar Ali. The finding of the Fast Track Court that the evidence of PW-3 lends support to the correctness of the prosecution case is therefore incorrect. Thus, the evidence of PW-3 in no way lends succor to the case of the prosecution.

43. Moving on to the evidence of PW-4, who is also alleged to be injured in the said incident was also not an eye-witness to the occurrence. As per his own deposition, he went to the place of occurrence after he saw many people gathered there. According to this witness, accused Md. Hasan Ali assaulted the deceased Ekkabar Ali, however, during his cross-examination, he clearly stated that he did not know as to who told him that accused Md. Hasan Ali stabbed the deceased Ekkabar Ali.

44. Further, PW-5 was also not an eye-witness to the incident of deceased Ekkabar Ali being killed by the accused persons. According to this witness, the accused persons Md. Sahed Ali, Md. Sabed Ali, Mustt. Chandabhanu, Mustt. Hazerabhanu and Md. Yunush Ali came towards him and told that they had killed the deceased Ekkabar Ali. However, this witness has failed to state which one of the accused persons actually stabbed the deceased Ekkabar Ali. The evidence of PW-5 thus, does not lend any credence to the case of the prosecution.

45. On scrutinizing the evidence of PW-10 i.e., the Investigating Officer, it is clear that PW-10 did not verify the land documents/land

records of PW-6 as well as of the persons accused. The Fast Track Court has held that on the relevant day i.e., on the day of the incident, PW-6 was cultivating the land however the accused Md. Sahed Ali also claimed to be owner of the land. Also, witness PW-10 did not collect the blood stains from the place of occurrence.

46. Hence, we find there is no clinching evidence so as to prove beyond reasonable doubt the case of the prosecution as there are contradictions in the evidence/depositions of PW-1, PW-2 and PW-5. Moreover, the evidence of PW-6, the informant is inconsistent with the depositions of PW-1, PW-2 and PW-5. We find that the inherent contradictions in the evidence of the prosecution-witnesses does not prove the case of the prosecution beyond reasonable doubt. Therefore, the evidence of the defence witnesses in relation to the *alibi* of Md. Sahed Ali need not be considered as such.

47. It is pertinent to mention here that the finding of the High Court as well as of the Fast Track Court is erroneous since no document was brought on record to prove the possession or the ownership of the said disputed land. The Fast Track Court arrived at a conclusion that the disputed land where the occurrence took place was in possession of the complainant's party on mere conjectures. Hence, we express no opinion on that aspect of the case.

48. It is noted that great weight has been attached to the testimonies of the witnesses in the instant case. Having regard to the aforesaid fact

that this Court has examined the credibility of the witnesses to rule out any tainted evidence given in the court of Law. It was contended by learned counsel for the appellant that the prosecution failed to examine any independent witnesses in the present case and that the witnesses were related to each other. This Court in a number of cases has had the opportunity to consider the said aspect of related/interested/partisan witnesses and the credibility of such witnesses. This Court is conscious of the well-settled principle that just because the witnesses are related/interested/partisan witnesses, their testimonies cannot be disregarded, however, it is also true that when the witnesses are related/interested, their testimonies have to be scrutinized with greater care and circumspection. In the case of ***Gangadhar Behera and Ors. v. State of Orissa (2002) 8 SCC 381***, this Court held that the testimony of such related witnesses should be analysed with caution for its credibility.

49. In ***Raju alias Balachandran and Ors. v. State of Tamil Nadu (2012) 12 SCC 701***, this Court observed:

“29. The sum and substance is that the evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence and not one of law, as held in ***Dalip Singh [AIR 1953 SC 364] and pithily reiterated in Sarwan Singh [(1976) 4 SCC 369] in the***

following words: (Sarwan Singh case [(1976) 4 SCC 369, p. 376, para 10)

“10. ... The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration.”

50. Further delving on the same issue, it is noted that in the case of ***Ganapathi and Anr. v. State of Tamil Nadu (2018) 5 SCC 549***, this Court held that in several cases when only family members are present at the time of the incident and the case of the prosecution is based only on their evidence, Courts have to be cautious and meticulously evaluate the evidence in the process of trial.

51. It is thus settled that the evidence of the related witnesses have to be considered by applying discerning scrutiny. In the instant case, it is seen from the testimonies of the prosecution witnesses that all the witnesses are related to the deceased Ekkabar Ali and therefore all the witnesses being related to each other. In order to elucidate on the said aspect, it is pertinent to note the relationship of the witnesses and to the deceased Ekkabar Ali. PW-1 in his deposition stated that the deceased Ekkabar Ali was his cousin (paternal uncle's son) and PW-6 is the husband of his niece. PW-2 stated that the deceased Ekkabar Ali was his paternal uncle. PW-3 and PW-4 deposed that they were

brothers of the deceased. PW-5 was the brother-in-law of the deceased and PW-6 stated that the deceased was his maternal uncle in law. It is necessary to state here that the evidence of the related witnesses can be rejected if there are material contradictions and inconsistencies found in their testimonies. It is observed that there have been material improvements in the testimony of PW-1. PW1- in his examination deposed that accused Md. Jabbar Ali stabbed Ekkabar Ali however in his cross-examination, PW-1 stated that he had not told the police that Md. Jabbar Ali stabbed Ekkabar Ali. The same is an improvement in the testimony which has to be borne in mind.

52. Further as already stated above, all the witnesses have given contradictory versions as to who gave the fatal blow to deceased Ekkabar Ali and the same amounts to material contradictions. It is reiterated that the testimony of PW-6 is inconsistent with the testimonies of PW-1, PW-2 and PW-5 This Court in the case of ***State of Rajasthan v. Kalki & Anr. (1981) 2 SCC 752***, distinguished between the normal discrepancies and material discrepancies. This Court held that the Courts have to label as to which category a discrepancy can be categorized. The material discrepancies corrode the credibility of the prosecution's case while insignificant discrepancies do not do so.

53. Keeping in view the aforesaid principle, this Court would hold that in the present case, there are material discrepancies in the

testimonies of the witnesses and the same is fatal to the case of the prosecution. The prosecution has thus failed to prove the guilt of the accused-appellants beyond reasonable doubt.

54. In the present case, owing to the substantial and material contradictions in the testimonies of the prosecution witnesses, the evidence of the prosecution is considered wholly unreliable. Additionally, the prosecution has examined only related witnesses and not a single independent witness. Therefore, in the facts and circumstances of the case, the evidence does not prove the alleged offences against the accused-appellants.

55. Another aspect that this Court would like to look into is as to what extent this Court can reappraise and reappraise the evidence on record. In a catena of cases, it has been held that though in cases of concurrent findings of fact, this Court will ordinarily not interfere with the said findings, this Court is empowered to do so if in case it finds *inter alia*, misreading of the evidence or where the conclusions of the High Court are manifestly perverse.

56. Reliance in this regard is placed on the recent judgment of this Court in ***Ashoksinh Jayendrasinh v. State of Gujarat (2019) 6 SCC 535***, wherein it has categorically held that when the High Court has failed to appreciate the oral evidence, it would definitely be entitled to appreciate the evidence in its correct perspective. In the present case at hand as well, the finding of conviction was recorded overlooking the

material contradictions in the evidence of the prosecution witnesses and therefore the said conviction deserves to be set-aside. The relevant portion from the aforesaid judgment is quoted as:

“We are conscious that the Supreme Court would be slow to interfere with the concurrent findings of the courts below. In an appeal under Article 136 of the Constitution of India, concurrent findings of fact cannot be interfered with unless shown to be perverse *(vide Mahesh Dattatray Thirthkar v. State of Maharashtra (2009) 11 SCC 141: (2009) 4 SCC (Civ) 468)*. Where the appreciation of evidence is erroneous, the Supreme Court would certainly appreciate the evidence. In our considered view, the High Court ought to have weighed and considered the materials. When the findings of the trial court and the High Court are shown to be perverse and there is no proper appreciation of evidence qua the appellant, the Supreme Court would certainly interfere with the findings of fact recorded by the High Court and the trial court.”

57. It is further noted that the injuries caused to PW-1, PW-2, PW-4 and PW-5 are simple in nature as per the medical reports submitted by PW-7 and PW-9. The witnesses PW-7 and PW-9 have categorically stated in their reports that the injuries were caused by a blunt weapon and therefore the High Court and the Fast Track Court has grossly erred in convicting and sentencing the accused Nos. 1, 2, 3, 5, 6, 7 and 8 for simple imprisonment for one year.

58. In our view, the High Court as well as the Trial Court have failed to take into consideration, the vital discrepancies and inconsistencies

in the evidence of the prosecution witnesses and therefore the High Court was not justified in reaffirming the judgment and order of conviction passed by the Fast Track Court.

59. Having re-appreciated the evidence of the witnesses, we find that the High Court was not justified in affirming the judgment of conviction and sentence passed by the Fast Track Court, of the first three appellants herein, namely, Md. Jabbar Ali (accused no.4), Md. Moyan Ali (accused no.10) and Md. Sahed Ali (accused no.11) to undergo life imprisonment and of the other appellants namely Md. Omar Ali (accused no.3), Md. Hasan Ali (accused no.2), Mustt. Hazerabhanu (accused no.6), Mustt. Chandrabhanu (accused no.7), Md. Tabibor Rahman (accused no.5) and Md. Ajmot Ali (accused no.8- appellant in the connected matter) to undergo simple imprisonment for one year.

60. In view of the aforesaid discussion, we find that the Session Court as well as the High Court were not right in convicting and sentencing the appellants herein and therefore, the impugned judgments are liable to be set aside.

61. In the result, the appeals filed by the appellants-accused are allowed and the impugned judgments passed by the High Court affirming the conviction and sentence by the Fast Track Court are hereby quashed and set aside. The appellants are acquitted of all the charges levelled against them in the instant case.

62. Pending application(s), if any, shall stand disposed of in the above terms.

.....**J.**
(AJAY RASTOGI)

.....**J.**
(B.V. NAGARATHNA)

NEW DELHI;
17th October, 2022.