

In The Court of The Chief Judicial Magistrate ;
Hailakandi.

Case No. G.R. 630/2010.

State of Assam..... Prosecution.

- Vrs -

- Aftab Uddin Laskar,
- Ali Hussein Laskar,
- Kayum Hussein Laskar,
- Nur Uddin Barbhuiya &
- Abul HusseinAccuseds.

Present:- Sri T. K. Bhattacharjee, AJS

Dates of evidence :- 01/6/11, 21/11/11, 23/12/11, 19/2/12 , 27/2/12, 16/5/12, 16/6/12,
04/8/12 & 29/4/13.

Date of arguments :- 27/11/13 & 30/1/14.

Date of judgment :- 13/2/14.

C O U N S E L :-

Mr. A. Deb, Ld. Addl.P.P. for the prosecution.

Mr. U. K. Das, Ld. Advocate for defence.

J U D G M E N T

The brief facts of the prosecution case, as revealed from the ejahar is that on 14/5/10 at about 7.00 p.m. and at about 9.00 p.m. at Rajyeswarpur pt-VII, under Lala P.S., District- Hailakandi, the accuseds Aftab Uddin, Ali Hussein and Kayum Hussein attacked one Burhan Uddin Choudhury when he was going in a motorcycle from Kalacherra to his house and the accused Aftab Uddin struck the said Burhan Uddin with a 'lenja' below his stomach and injured him seriously and accused Ali Hussein struck the said Burhan Uddin on his

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forehead with a dao and injured him seriously and the accused Kayum Hussein struck the said Burhan Uddin with a lathi and when Jahan Uddin came to rescue Burhan Uddin, the accuseds Aftan Uddin, Ali Hussein and Kayum Hussein struck Jahan Uddin with lathi and injured him and also struck him with a 'lenja' and injured him in his chest and thereafter, the victims were being taken to Lala PHC and on the way at about 9.00 p.m. the accuseds Nur Uddin and others stopped the auto near their house and attacked the victims and others and beat them up and injured them and pulled out the hair of Samarjan Bibi, the mother of the victims and snatched away Rs.15,000/- from her and also took away other beddings with her and thereafter, neighbouring people gathered there on hearing hue and cry and rescued the victims after which the victims were taken to Lala PHC from where they were sent to Hailakandi Civil Hospital but from where they were referred to Silchar Medical College & Hospital (**SMCH**). It is also mentioned in the ejahar that as the informant was busy at SMCH with the treatment of the victims, there was a delay in filing this case. Accordingly this case was initiated.

On receipt of information to that effect the police registered Lala P.S. Case No.190/10 u/s 341/342/326/307/392 IPC and took up the investigation and after completion of the same a charge sheet was submitted against the accused persons u/s 147/149/341/342/323/326 IPC sending them up for trial.

On appearance of the accused persons before this Court, the relevant copies were furnished to them and vide orders dtd.21/2/11 charges u/s 147/149/341/323/326 IPC were framed against the accused persons and the contents of the said charges were read over and explained to them, to which they pleaded not guilty and claimed to be tried and accordingly, the trial of this case commenced.

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During trial, prosecution side adduced its evidence by examining nine witnesses which included the informant, the victims, the Medical Officer (M/O) and the Investigating Officer (I/O) etc. of this case and after prosecution evidence concluded, the accused persons were examined u/s 313 Cr.P.C. and though they expressed their willingness to adduce evidence in their defence but they failed to adduce any evidence in defence.

Accordingly, this case proceeded further and the arguments of the learned respective counsels of both the sides were duly heard along-with the cross case and thereafter, the entire evidence in the case record was also perused in order to determine the matter at hand.

POINTS FOR DETERMINATION :-

- Whether on or about 14/05/10 at 7.00 p.m. and at 9.00 p.m. at Rajyeeswarpur pt-VII, under Lala P.S., District- Hailakandi, the accused persons formed members of an unlawful assembly and committed rioting in prosecution of their common object, as alleged ?
- Whether on or about the same date, place and time the accused persons wrongfully restrained Burhan Uddin Choudhury on the E&D bandh, in prosecution of their common object, as alleged ?
- Whether on or about the same date, place and time the accused persons voluntarily caused hurt to Fariz Uddin and Samarjan Bibi, in prosecution of their common object, as alleged ?
- Whether on or about the same date, place and time the accused persons voluntarily caused grievous hurt to Burhan Uddin and Jahan Uddin by means of sharp weapons, in prosecution of their common object, as alleged ?

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DISCUSSION, DECISION AND REASONS :

The P.W.1 was Dr. Sukomal Nath, the Medical Officer, who had examined the victims, namely Fariz Uddin and Samarjan Bibi on 14/5/10 at the Hailakandi Civil Hospital on police requisition and found injuries on Fariz Uddin as follows:- Laceration on right perital scalp and abrasion on the right lower part of interior abdominal wall and the above said injuries were fresh, simple and caused by blunt object. He also found injuries on Mustt. Samarjan Bibi :- Swelling and tenderness over chest and back and the said injury was fresh, caused by blunt object and simple in nature. His medical report was brought on record as the Ext.-1. From his cross-examination it is found that on the same date he examined Aatur Rahman, Ali Hussein and Aftarun Nessa in connection with G.R. Case No.629/2010 and found grievous and simple injuries upon them.

The P.W.2 was Burhan Uddin Choudhury and according to him at about 7/7.30 p.m. when he was coming home in his motorcycle, accused Aftab Uddin stopped him at Rajyeswarpur on the E&D Bandh and the accused Ali Hussein hit him on his stomach with a sharp weapon (Lenja) and he shouted, his younger brother Jahan Uddin came and caught him but accused Aftab Uddin hit him on his chest with a 'lenja' and the accused Kayum Hussein also tried to assault him with a dao but it hit his motorcycle. His testimony further reveals that neighbouring people like Sahab Uddin, Jamir Uddin and others came to the spot and put them in an auto and on their way towards Lala hospital, the accused Abul Hussein stopped the auto and attacked them and accuseds Nur Uddin, Moin Uddin and others were there with accused Abul Hussain and they also attacked his mother Samarjan Bibi, who was with them and the accused persons also snatched away their money, water-bottle and other materials and thereafter,

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Lala Police came and rescued them. According to him, they went to Lala PS and then to Lala PHC and then to Hailakandi Hospital and the following morning he and his brother were sent to SMCH where they were admitted for more than two months. From his cross-examination it is found that Farij Uddin, his mother, another Farij Uddin Laskar, informant Rehan Uddin, Tina Begum and Kebarun Nessa accompanied him to Lala hospital and that the E&D bandh is not for the purpose of use of vehicles but for stopping the flood water and that during the rainy season the bandh remains muddy. He also admitted that, he his brother-in-law and his brother are the accuseds in G.R.Case No.629/10 lodged by the present accuseds and also that the police did not seize the motorcycle. He also admitted that one Jamir Uddin and Sahab Uddin came to the place of occurrence. This witness denied numerous suggestions put to him by the Id.defence counsel and denied that he entered the house of accused Aftab Uddin and misbehaved with his wife and was caught red-handed and that while flee away from there he sustained injuries. His cross-examination also reveals that he did not see who assaulted him on the way to Lala hospital though he again stated that the accuseds Abul Hussein, Nur Uddin, Kayum Hussein, Aftarun Nessa, Aftab Uddin and Moin Uddin assaulted him and they also assaulted Fariz Uddin who was with him though he did not see who assaulted his mother.

The P.W.3 was Fariz Uddin Hazari and according to him, he heard hulla from the E&D bandh and went there and found the accuseds Aftab Uddin, Ali Hussein and Kayum assaulting Burhan Uddin and Jahan Uddin and injuring them and he tried to take them to hospital in an auto; but on the way some people stopped the auto and started assaulting them due to which he and other passengers were injured and police came and rescued them. He also stated that

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he was given treatment at Hailakandi Hospital and Burhan Uddin and Jahan Uddin were admitted to SMCH. His cross-examination reveals that he did not see the assault and that he was the first person to reach the place of occurrence and also that he is an accused in the case filed by the accuseds of this case. According to him, he, Fariz Uddin, Jamir Uddin, Sahab Uddin, Samarjan Bibi were there in the auto; but he could not recognize the people who stopped the auto and assaulted them. His testimony also reveals that police came there.

The P.W.4 was Mustt. Samarjan Bibi and she too heard hulla from the E&D bandh and came out and saw her sons Burhan Uddin and Jahan Uddin were being brought by people in injured condition and when they were proceeding to Lala PHC, the accuseds Abul Hussein, Aatur Rahman, Kayum and others attacked them and injured them and thereafter police came and rescued them and they were taken to Lala PHC who sent them to Hailakandi Hospital and following day her sons were sent to SMCH. Her cross-examination reveals that she did not see the assault upon Burhan Uddin and Jahan Uddin and that they were assaulted inside the auto by accuseds Kayum, Ali Hussein and Atabur. She also stated that she was admitted to SMCH along-with her sons.

The P.W.5 was the informant Rehan Uddin Choudhury but he had not seen any occurrence and he had come to know the occurrence from his mother and other people like Farij Uddin and Sahab Uddin. He however, admitted in his cross-examination that he told police that while he was taking the victims to Lala hospital the accuseds Nur Uddin and Babul stopped the vehicle and assaulted his mother, Fariz Uddin and both the victims; and that some money of his mother also fell down somewhere.

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The P.W.6 was Sahab Uddin Hazari, but he was declared a hostile witness by the prosecution. According to him, he had heard hulla from the E&D bandh and saw gathering of people and fighting was going on and he watched from a distance and after some time, he saw Burhan Uddin and Jahan Uddin were injured and he took them to their house. From his testimony it is also found that he is the brother of witness Fariz Uddin and that he did not see who assaulted Fariz Uddin and the other two victims. He had also seen the motorcycle lying a little away and he did not go to the place of the second occurrence.

The P.W.7 was Dr. Bikash Sandilya, who was posted at the SMCH and on 15/5/10 at about 12.30 p.m. he examined Burhan Uddin and found a stitched wound over hypogestrium with tenderness guarding and the patient underwent an operation and there was multiple perforation in the ileum and according to him, the injuries were fresh, grievous and caused by sharp weapon. He had also examined Jahan Uddin Choudhury, the other victim on the same date at about 7.00 p.m. and found a penetrating wound on the interior chest wall and on the right lobe, subscapular haematoma on liver and the said injuries were also fresh, grievous and caused by a sharp weapon. His medical report was brought on record as the Ext.-3. From his cross-examination it is found that in the Ext.-3 there is no mention of any police requisition or anything about the identification of the patients and that the two victims were admitted at different times in the SMCH. His cross-examination also reveals that such kind of injuries may be caused by falling on sharp, split fencing.

The P.W.8 was the other victim namely Jahan Uddin Choudhury and according to him, the accused persons Atab, Kayum and Ali Hussein beat up Burhan Uddin with a 'lenja' in the naval area and injured him and when this

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PW went to the place of occurrence, on hearing hulla, the accused Atab hit him with a 'lenja' on the right chest and accused Ali Hussein also gave him 2-3 blows with a lathi and thereafter, village people came and the accuseds fled away prior to which his brother-in-law Fariz came there and accuseds Ali Hussein and Kayum hit him with a lathi. He also deposed that when they were on their way to Lala hospital in an auto the three accused persons stopped them and gave them a severe beating and that he was taken to Lala hospital and from where to Hailakandi Hospital and both he and Burhan Uddin were admitted to SMCH. His cross-examination reveals that when Burhan Uddin was assaulted, he was at home and that he did not tell the police that while trying to save his brother, the accuseds attacked him. He further stated that during second occurrence Aftab Uddin and his brother-in-law Nur Uddin hit Burhan Uddin and Kayum Hussein and Ali Hussein hit him and Fariz; and that village people rescued them and that Burhan Uddin and he were admitted to SMCH at about 8/9 a.m. This witness is also an accused in the case filed by the accused persons of this case and he denied during his cross-examination that he got injured when trying to flee away from the house of the accused persons by falling on bamboo fencing.

The P.W.9 was the police official who took up the investigation of this case and from his examination it is found that the occurrence took place on 14/5/10 at about 7.00 p.m. and again at 9.00 p.m. but the ejahar was received on 18/5/10 through the Court and that nothing was seized in connection with this case. His cross-examination also reveals that the victims were referred to SMCH from Hailakandi Civil Hospital, but Samarjan Bibi was not given any treatment at SMCH. His cross-examination further reveals that the witness Burhan Uddin did not tell him specifically that accused Ali Hussein assaulted him with a 'lenja' when he was getting down from his motorcycle and nor he stated specifically which accused used what weapon. His testimony also reveals

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that witness Jahan Uddin told him that Aftab Uddin, Ali Hussein and Kayum hit Burhan Uddin with “Bollom” and he did not mention any other weapon and the witness Jahan Uddin also told him that only Nur Uddin and Abul Hussein hit Fariz Uddin after stopping the vehicle.

The prosecution side did not examine any other witnesses and the Id. Counsel for the accused persons submitted during the arguments that the prosecution case has no legs to stand in view of the absence of seizure of the weapons used or the seizure of any blood stained clothes , the cross-case between the parties , the inordinate delay in filing the complaint , contradictions regarding who assaulted Burhanuddin in the complaint and deposition of Burhanuddin , various omissions in stating vital facts to the police by the witnesses , absence of independent corroboration , the failure of the prosecution to explain where the two victims Burhanuddin and Jahanuddin were taken after the occurrence and where they were prior to their admission at the Silchar Medical College and Hospital which was on the following day of the occurrence and the Id. counsel accordingly prayed to acquit the accused persons .

Now therefore , from the above discussion and the entire evidence in the case record it is quite apparent that there was a case and a cross-case between the parties with respect to the occurrence on the same date but though the arguments of both the cases were heard simultaneously , each case must be decided on its own merit and not otherwise . The filing of this case and the counter case however lends support to the fact that an occurrence actually took place between the parties on the date of the alleged occurrence . On careful scrutiny of the evidence on record it is found that the ejahar of this case was filed after

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a few days of the alleged occurrence on 18-5-2010 but the reason for the delay was mentioned in the ejahar and according to the informant, the delay was caused as he was busy with the treatment of the victims of this case. Moreover, the FIR sheet reveals that a GDE no. 423 was also made in this context. However, a delayed ejahar is not illegal and in my opinion, the delay in lodging the ejahar cannot be used as a ritualistic formula to discard the prosecution case and to doubt its authenticity in the absence of any clear indications of fabrication. The case record reveals that, as per the allegations, two incidents took place, one at about 7 p.m. and the other at about 9 p.m. and as such it is necessary to examine each of the allegations carefully and determine the extent of the involvement of the accused persons, if any, in either of the two incidents.

As regards the 1st occurrence at about 7 p.m., it is found from the evidence on record that only three accuseds namely Aftabuddin (Aftabuddin), Ali Hussain and Kayum Hussain were present at that time. As per the complaint, the Ext.1, the accused Aftabuddin hit the victim Burhanuddin with a "lenja" (a sharp weapon) below his stomach but the deposition of Burhanuddin (the PW-2) reveals that it was accused Ali Hussain who hit him with a "lenja" on his stomach. However, the law is well settled that the ejahar need not mention all the details minutely and as the informant was not the victim and nor he was present during this occurrence, the prosecution case cannot be thrown out on this score alone. The fact that the 3 accuseds Aftabuddin, Ali Hussain and Kayum Hussain were there at that time was stated by the victim Burhanuddin and also corroborated by the other victim Jahanuddin and an eye-witness Farijuddin and both Burhanuddin and Jahanuddin corroborated each other and stated that accused Aftabuddin hit Jahanuddin with a "lenja" on his

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chest and Burhanuddin also stated that accused Ali Hussain hit him with a “lenja” on his stomach . The very presence of the said accused persons at the place of the occurrence at that time was not challenged and the Medical Officer (PW-7) also found fresh , grievous injuries caused by sharp weapons on the persons of both Burhanuddin and Jahanuddin and the said injuries were also indirectly admitted by the defence side by suggestions during cross-examination that such injuries were caused by falling while trying to escape by breaking the fencing which fact was denied by the victims . It may also be mentioned here that from the deposition of the Investigating Officer (PW-9) it is found that the victim Jahanuddin told the PW-9 that accuseds Aftabuddin , Ali Hussain and Kayum hit Burhanuddin with a “bollo” and did not mention any other weapon but apparently Jahanuddin did not see the assault upon Burhanuddin as stated by him in his cross-examination . From the above discussion and the entire evidence on record it is found that there is no reason to disbelieve the victim Burhanuddin that he was waylaid by the three accused namely Aftabuddin , Ali Hussain and Kayum Hussain at the E&D bundh area and struck by accused Ali Hussain with a sharp weapon and the corroborated version that Jahanuddin was also hit by a sharp weapon on his chest by the accused Aftabuddin when he came there. The victim Burhanuddin also stated that the accused Kayum tried to hit him with a dao and he specifically stated in his cross-examination that all the three persons assaulted him . The PW-3 Farijuddin did not mention anything about him being assaulted and though Jahanuddin (PW-8) stated that Farijuddin was also assaulted , Burhanuddin did not mention this fact. However , it is a settled position of law that the testimony of a single reliable and trustworthy witness would suffice in order to prove the guilt of the persons involved and plurality of

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prosecution witnesses is not always required to establish the prosecution case . On the other hand , the PW-4 , the mother of the victims , saw her sons being brought in injured condition though she did not see how they were injured and the PW-6 , Sahabuddin , who lives near the place of occurrence , also saw Burhanuddin and Jahanuddin injured in the E&D bundh and though this witness was declared “hostile” but there is no impediment in relying on that part of his evidence which supports the prosecution case and his testimony lends support to the fact that both Burhanuddin and Jahanuddin were found injured in the E&D bundh . The victim Burhanuddin also corroborated the presence of the PW-6 at the place of occurrence at that time and though the defence side took the plea that the victims entered the house of accused Aftabuddin and when they were chased they fled away by breaking the fencing and got injured in the process but it is rather difficult to believe that two persons would be injured similarly by the same process without any evidence in this context . Moreover , there is nothing concrete in the evidence on record to indicate that the E&D bundh is completely inaccessible by a motorbike and though the Investigating Officer did not seize any offensive weapons or any blood stained clothes , the absence of any such seizure cannot by itself distort the entire prosecution case particularly when the prosecution story is corroborated by the victims as well as supported by medical testimony and despite the fact that the prosecution failed to explain where the two victims were kept till their admission to the Silchar Medical College and Hospital the evidence on record is conspicuous that the victims were injured and these facts were also not denied or challenged in any manner whatsoever but rather it was indirectly admitted that they were injured while trying to flee by breaking the fencing . Further , the mere existence of a cross-case would not affect the merits of this case

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particularly in the absence of any defence evidence with respect to the cross-case as each case must be decided on its own merit and thus, from all the above facts and circumstances I am of the opinion that it is apparent from the materials available in the case record that the accuseds Aftabuddin, Ali Hussain and Kayum wrongfully restrained the victim Burhanuddin on the E&D bundh and assaulted him and when Jahanuddin came there, he was also assaulted and both Burhanuddin and Jahanuddin were injured grievously by means of sharp weapons. However, as the accused persons were only three in number at that time the ingredients of section 147 / 149 of the IPC cannot be invoked against them so far as their role in the 1st episode was concerned.

As regards the 2nd episode which allegedly took place a little later while the victims and others were on their way to the hospital it is found from the evidence on record that according to the victim Burhanuddin they were attacked by the accused Abul Hussain, accused Nooruddin, accused Aftabuddin, accused Ali Hussain, accused Kayum Hussain, Aftarun Nessa and one Moinuddin and they also attacked his mother Samarjan bibi and snatched away money and other materials from them but accused Abul Hussain and Aftarun Nessa were not named in the complaint, the Ext.1 and this witness also stated in his very next breadth that he did not see who assaulted him or his mother at that time. The PW-3 namely Farijuddin also could not throw any light upon the identity of the persons involved in the 2nd episode and he specifically stated that he could not recognize the persons who stopped their auto and assaulted them though he stated that he was injured. The PW-4 namely Samarjan Bibi deposed that she was proceeding towards Lala PHC with her

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injured sons, when on the road at “Chouddahali” the accuseds Abul Hussein, Atabur Rahman (whose name is also Aftab Uddin @ Atai), Kayum and others attacked and injured them; but she did not mention about the accused Nur Uddin specifically. She also stated that they were sent to Lala PHC and then to Hailakandi Civil Hospital and on the following day her sons were sent to SMCH though she stated in her cross-examination that she too was treated at SMCH. Her cross-examination also reveals that they were assaulted inside the auto by accuseds Kayum, Ali Hussein and Atabur (Aftab Uddin). The P.W.5, who was the informant had not seen any occurrence and from his testimony it is also found that he was not present at the “Chouddahali” point where the second episode allegedly took place. However, his evidence shows that his mother Samarjan Bibi was treated at Hailakandi hospital and his brothers Burhan Uddin and Jahan Uddin were admitted to SMCH. The P.W.6 who was declared a hostile witness has failed to help the prosecution case to any extent as far as the second occurrence at “Chouddahali” was concerned and his testimony shows that he did not go to the second place of occurrence. The P.W.8 Jahan Uddin Choudhury did not mention anything about the other accused persons and according to him the three accuseds Atab (Aftab Uddin), Kayum and Ali Hussein stopped them at “Chouddahali” when they were being taken to Lala hospital and gave them a severe beating.

Now therefore , the above discussion and the entire evidence in the case record reveals that the witnesses have also corroborated each other with respect to the time and place of the 1st occurrence at the E&D bundh and also the presence of one another at the place of the said occurrence and though some discrepancies have come to light during the cross-examination of the witnesses the same cannot be construed to be inconsistent with ordinary human probabilities and conduct and cannot

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wash away or diminish the merits of the entire prosecution case and the examination-in-chief of the victims Burhanuddin and Jahanuddin cannot be said to be wholly shaken particularly in view of the existence of other supporting evidence on record . The evidence on record clearly shows that that there are no serious discrepancies between the statements of injured eye-witnesses which have been corroborated by medical evidence too. It may be mentioned in this context that the P.W.1 (Dr. Sukomal Nath) examined the victims Fariz Uddin and Samarjan Bibi on the date of occurrence on police requisition, escorted by H.G.- M. R. Mazarbhuiya of Lala P.S. and he also found fresh, simple injuries, caused by blunt object on their persons; but however, all the victims did not name the other accuseds namely Nur Uddin and Abul Hussein specifically as being present at the place of the second occurrence at “Chouddahali” at that time and further, the accused Abul Hussein was also not named in the complaint where the names of 14 (fourteen) accused persons were mentioned. The testimony of the P.W.9, the Investigating Officer reveals that there are certain omissions and contradictions in the evidence on record; but in my opinion, the said discrepancies are not severe enough to distort the entire prosecution case. Besides , it is the onerous duty of the Court to find out the actual truth and a certain amount of imbalance in the evidence can be considered to be normal . Moreover , the evidence in the case record reveals that the assault and injuries caused to the victims Burhanuddin and Jahanuddin by the accuseds Aftabuddin , Ali Hussain and Kayum was corroborated by the evidence of other witnesses and supported by the evidence of a medical - expert and the very presence of the accused persons , the victims and the witnesses at the place of occurrence at the relevant point of time was not disputed in any manner whatsoever , and under the said circumstances , the evidence of the victims cannot be thrown out on the basis of every hunch , hesitancy , procedural

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technicalities or insignificant lacunas . It may also be mentioned here that in the case reported in (2001) 2 GLR 631 it was observed by the Hon'ble Gauhati High Court that while appreciating the evidence in a criminal case the Courts should not look for mathematical accuracy and exactitude but the evidence must be weighed by reference to normal conduct .

Further , during the examination of the accused persons u/s 313 Cr.P.C. they simply denied the occurrence without any further elucidations and though they expressed their willingness of adducing defence evidence, they failed to do so subsequently. On the other hand , the evidence on record reveals that the victims have all deposed that the accused persons assaulted them and though the formal ejahar was not filed immediately after the occurrence , the reasons for the delay were satisfactorily explained by stating that the informant was busy with the medical treatment of the victims and as such it cannot be said that an inordinate delay was caused in lodging the ejahar . Further , the appreciation of evidence in a criminal trial is required to be done on the broad probabilities of the case and the natural flow of the prosecution story in the instant case with respect to the 1st episode is convincing enough in view of the corroborating evidence available in the case record . Thus , from the entire evidence in the case record it is quite apparent that the prosecution case is free from any serious infirmities so far as the involvement of the accuseds Aftabuddin, Ali Hussain and Kayum Hussain in the occurrence at the E&D bundh and the subsequent occurrence at Chouddahali was concerned nor there is any such concrete material in the evidence on record to render the prosecution case as doubtful and considering all the above facts and circumstances as well as by knitting together the pieces of evidence available in the case record and also by

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removing the chaff from the grain , I am of the opinion that the materials on record are sufficient to hold that the accused persons namely Aftabuddin, Ali Hussain and Kayum Hussain wrongfully restrained Burhanuddin on the E&D bundh and caused injuries upon the victims Burhanuddin and Jahanuddin within the meaning of section 320 IPC and by dangerous means with common intention and that they also caused injuries upon the victims Farijuddin and Samarjan Bibi within the meaning of section 319 of the IPC with common intention .

Therefore , in the light of the above discussion , I am inclined to come to the conclusion that the said accused persons namely Aftabuddin, Ali Hussain and Kayum Hussain are guilty of the offences u/s 341 / 326 / 323 / 34 of the IPC and that the prosecution has successfully established its case to that extent against the said accused persons beyond reasonable doubt by adducing cogent evidence .

It may be mentioned here that from the very fact that the above named three accused persons were actively involved in the occurrence, it is apparent that they shared common intention and it can be easily inferred from the attending circumstances of the case and the conduct of the parties. However, the role of the accused persons namely, Nur Uddin and Abul Hussein are found to be doubtful and as such, they are given the benefit of doubt. Accordingly, the accused persons, namely, Aftabuddin, Ali Hussein, Kayum Hussein, Nur Uddin and Abul Hussein are not found guilty u/s 147/149 of the I.P.C. and further the accuseds Nur Uddin and Abul Hussein are also not found guilty u/s 341/323/326 of the I.P.C. beyond reasonable doubt and as such, the accuseds **Nur Uddin and Abul Hussein are acquitted** of the said charges and

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set at liberty forthwith. However, the accused persons, namely, Atabur Rahman (Aftabuddin), Ali Hussain and Kayum Hussain are found guilty u/s **341/323/326/34** of the Indian Penal Code beyond reasonable doubt and considering all the facts and circumstances of this case as well as the nature of the offences and the injuries inflicted on the victims, the provisions of section 360 Cr.P.C. or the Probation of Offenders Act cannot be invoked in the instant case and the accused persons must be punished adequately as they have acted mercilessly against unarmed and helpless persons .

I have heard the accused persons on the point of sentence and they have stated that they belong to the economically weaker section of the society, that they were never involved in any offence and they prayed for leniency .

In awarding sentence on the offender, the nature of the injuries, part of the body injured, weapon used etc. are to be taken into active consideration and considering all the facts and circumstances of this case the accused persons namely, **Atabur Rahman (Aftabuddin), Ali Hussain and Kayum Hussain** are hereby convicted u/s **341/34** IPC and sentenced to suffer Simple Imprisonment for a period of **1(one) month** each. Further, they are also convicted u/s **326/34** IPC and sentenced to suffer **Rigorous Imprisonment for a period of 4(four) years** each and also to pay a fine of **Rs 3,000/-(Rupees three thousand) only, each, in default** of the said payment of fine to suffer **Simple Imprisonment for 2(two) months**. They are further convicted u/s **323/34** IPC and sentenced to suffer **Simple Imprisonment** for a period of **4(four) months** each. The sentences of imprisonment shall run concurrently. The period of detention already undergone in jail - hajot, if any, shall be set off accordingly.

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The fine amount of Rs 9,000/- (**Rupees nine thousand**), if realized from the convicts, shall be deposited in the appropriate head after paying 50% (fifty per cent) of the realised fine to the victims. A free copy of this judgment shall be furnished to the convicted-accuseds forthwith and another copy of the same shall also be forwarded to the learned District Magistrate , Hailakandi for his kind information and necessary action. Issue Warrant of Commitment of Sentence of Imprisonment accordingly.

Given under my hand and seal of this Court on this the 13th day of February / 2014.

(T.K. Bhattacharjee)

Dictated & corrected by me.

C.J.M.
Hailakandi

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Transcribed by -: B. Choudhury, Stenographer.