

**IN THE GAUHATI HIGH COURT**

(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

**Criminal Appeal No.77 of 2008**

1.Jainul Haque Barbhuiya,  
Son of Mafur Raja Barbhuiya,  
Resident of village-Ghagrpar,  
Part-1, PO- Salchapara, Silchar,  
District- Cachar, Assam.

2.Mafur Raja Barbhuiya,  
Son of late Abdul Matlib,  
Resident of village-Ghagrpar,  
Part-1, PO- Salchapara, Silchar,  
District- Cachar, Assam.

.. Appellants/Convicts

**-VS-**

State of Assam

...Respondent

**BEFORE**

**HON'BLE MRS JUSTICE RUMI KUMARI PHUKAN**

Advocates for the appellants : Mr.A.Choudhury, Advocate

Advocate for the Respondent : Mr.B. Sarma, Addl. P.P.

Date of hearing and judgment : 4.1.2017

**JUDGMENT AND ORDER (Oral)**

Heard Mr. A.Choudhury, learned counsel appearing for the appellants and Mr. B. Sarma, learned Addl. Public Prosecutor, Assam.

2. This appeal has been preferred against the judgment and order dated 28.11.2007 passed by the learned Additional Sessions Judge, First Track Court, Cachar, Silchar in Sessions Case No.125/2002, convicting and sentencing the accused appellants to undergo rigorous imprisonment for 10(ten) years and pay fine of

Rs.5,000/- each in default to suffer rigorous imprisonment for 1 (one) year each for the offence committed U/S 149/304 Part-I IPC and also sentenced them to undergo rigorous imprisonment for 2 (two) years and also to pay a fine of Rs.1000/- each, in default R.I. for 6(six) months for the offence committed U/S 148 IPC.

3. The prosecution story in brief is that on 30.9.1998 at about 11.30 am accused Jainal Haque Barbhuiya, Ania Mia, Komal Mia, Mafur Raja, Amir Uddin Laskar, Altaf Hussian Laskar, Khudu Mia and Lalu Mia by forming unlawful assembly have assaulted Monindra Singh and his 2 (two) sons Shambhu Singh and Shankar Singh calling them out of their house by means of lathi and other weapons. Hearing hue and cry when their servant Hiralal Karmakar came out, he was also assaulted by the accused persons. Keeping them in injured condition at home, the informant Smti Chandana Sena Singh, wife of deceased lodged the FIR with Salchapra Patrol Post. The contents of the FIR were recorded in the General Diary and it was forwarded to the Officer-in-Charge, Silchar Police Station for registering a case. Accordingly, a case was registered U/Ss 147/148/149/447/325/326 IPC. During the investigation injured Monindra Singh succumbed to his injuries.

4. At the conclusion of the investigation the police submitted the charge-sheet against the accused appellants U/S 148/149/302 IPC. The case was committed to the court of learned Sessions Judge, the offence being session triable and thereafter the case was transferred to the Court of learned Additional Sessions Judge, Fast Track Court, Cachar in Sessions Case No.125/02 U/S 148/149/302 IPC for trial. Accordingly, the learned Addl. Sessions Judge framed the charge U/S 148/149/302 IPC against the accused appellants and the charge was explained to the accused appellants and they pleaded not guilty and stood the trial.

5. The prosecution examined as many as 12 witnesses including the official witnesses and the defence examined none. The plea of the defence appears to be total denial and claimed to be innocent. The accused did not adduce any evidence. In their statements U/S 313 CrPC the accused persons have stated that they are innocent and they have been falsely implicated. At the conclusion of the trial the accused appellants were convicted as aforesaid. Hence the appeal.

6. According to the appellants they were initially physically assaulted by the informants side for which they lodged an FIR with the O/C Silchar P.S. which was

registered as Silchar P.S. Case No. 1201/1998 U/S 147/148/149/341/324/325 IPC but the investigation was ended at Final Report as noncog U/S 323 IPC and the said Final Report was accepted by the learned Court without serving any notice upon the appellants. Referring to the aforesaid aspect the learned counsel for the appellant has argued that the dispute was originally sparked by the informant side and the dispute was about raising bamboo fencing by the informant side as there was land dispute. As the appellants side raised objection against such encroaching of grazing land there was altercation and mutual fight between the parties. It is contended that in the said matter of altercation deceased ran away on being chased by other accused persons as a result of which victim fell down by sustaining some injuries, resulting his death on the very next day and the present case was instituted only as a counterblast. The learned trial Court without appreciating all the matters to record properly has convicted the accused persons in erroneous manner whereas deceased sustained no sort of serious injury on his person and accordingly it is contended that conviction is bad in law.

7. On the other hand, learned Addl.P.P. has submitted that there is no infirmity in the judgment and order so passed by the learned trial Court and it needs no interference.

8. I have considered the above submissions of the rival parties and has gone through the evidence on record.

9. On consideration of evidence on record it is to be noted that PW 1 Smti Chandan Sena Singh is the wife of the deceased Manindra Singh has stated that at the time of occurrence while she was working in the kitchen and her husband/ deceased was erecting bamboo fencing in front of their house. Her two sons Shankar and Shambu were in the puja mandop at that time. All of a sudden she heard hue and cry and after coming out from kitchen she saw accused Butunga, Khudu, Anoi, Moinul armed with lathi, brickbats and stones chasing her husband towards the E & D bund near the electric post and they assaulted her husband by pelting stones and brickbats and lathis. At that time all the accused persons had surrounded her husband and assaulted him. She leaving her husband in that condition left to the police station and on the way she met her nephew Sukhojit and thereafter the FIR was filed. After returning from the police station she found her husband dead.

She has however, stated in the cross-examination the accused assaulted her husband by throwing stones and bricks. The suggestion of the defence that her husband sustained injuries by fall on the process of chasing has been denied by her.

10. PW 3 Dilip Kr. Singh claimed to be an eye witness to the occurrence. At the time of occurrence he was near the place of occurrence and he saw all the accused persons came with brickbats and stones in their bags. At that time Deceased Monindra was erecting his bamboo fencing in front of their house and Hiralal Karmakar was helping him. Suddenly all the accused namely Mofur Raja, Joinul HOque, Khudu Mia, Anoi Mia, Kamar Uddin, Altaf Hussain, Lalu Mia and Amir Uddin gheraod Monindra Singh and started pelting brickbats. On receiving the injuries the Monindra fell down on the ground. Then the accused persons dragged the deceased to the E & E bund. Hearing hulla, the sons of the deceased came to the place of occurrence and then the accused persons taking bamboo from the place of occurrence also started assaulting them. Both the sons of the deceased sustained injuries. After departure of the accused persons from the place of occurrence he himself along with Hiralal Karmkar lifted the injured Monindra to the E & D bund and then the accused Kamar Uddin and Anoi Mia assaulted Hiralal Karmakar with bamoboo and lathies causing injuries on his head. Accused Mofur Mia and Joinul assaulted with lathi on the chest and waist of the injured/deceased Monindra Singh. Thereafter the said injured/deceased was taken to his house and the wife of the deceased went to the police station to lodge the FIR. Police came and took the injured persons to the hospital along with Monindra Singh. Monindra Singh died in the hospital.

In the cross-examination this witness has stated that all the accused persons assaulted the deceased by pelting brickbats while the deceased was running towards E & D bund for his life. The deceased fell down for the impact of hit by the brickbats and sustained injuries.

11. PW 4 Anil Kumar Das and PW 6 Sanju Das both of them stated that while returning from puja mondop they heard Monindra Singh died. Both of them declared hostile by prosecution and thereafter they stated that there was a quarrel between both the parties. However, they have denied to have seen the occurrence. PW 5 Smti Promodini thus denied to have any knowledge about the occurrence.

12. One of the son of the deceased Shambu Kr. Singh as PW 7 was not present at the time of occurrence and hearing the matter he returned home and found his father lying unconscious at the side of the E & D bund and on his arrival the accused persons assaulted him with stones and lathis and as a result of which he sustained injuries on his leg and hand. His other brother Bijoy and servant Hiralal was also assaulted by accused persons. Thereafter they took their father to Hospital but he succumbed to his injuries. Police seized brickbats and stones from the place of occurrence.

13. The servant who was working in the house of deceased at the time of occurrence namely Hiralal Karmakar/PW has deposed that at the time of occurrence he saw the accused appellant while assaulting deceased Monindra Singh with brickbats and lathi and as a result of which Monindra Singh sustained injury and fell down on the ground. As soon as he went ahead to rescue Monindra Singh the accused assaulted him also with a lathi resulting injuries his persons. Although Monindra Singh was taken to hospital but he succumbed to injuries.

14. Two other witnesses who were neighbour of the deceased namely PW8 Sukhojit Singh and PW 10 Mohan Babu Singh are hearsay witness and has no direct knowledge about the occurrence. They have simply stated about seizure of brickbats and stones from the place of occurrence and about preparation of inquest report vide Ext.3 and Ext.4. As usual the investigating officer/PW11 has stated about receipt of FIR and about the investigation, preparation of seizure, inquest report and about of filing of charge-sheet etc. He has contradicted evidence of certain witnesses like PW1, PW3, PW9 that they did not stated before him that the accused assaulted the deceased with lathi and bamboo but it was stated that they pelted stones to the deceased.

15. PW 12 is the Medical Officer who prove the Post Mortem Report Ext.7. According to the report the following injuries were found at the time of Post Mortem Examination on the dead body of deceased Monindra Singh.

- " 1) One abrasion with contusion on the left side of waist 6 x 4 cms.
- 2) One abrasion with contusion of right upper chest wall 8 x 1 cm.
- 3) One abrasion with contusion in front of the chest wall over sternum 2 x 1 cm.
- 4) One abrasion over chin 1 x 1 cm.
- 5) One abrasion on right side of chick 1 x 1 cm.

On dissection contusion was found in the muscles around the external injuries. Ribs were found healthy. Pleasure contused. Plural cavity contained about 2 litres of liquid and clotted blood. In the right lung hillar region of upper lobe lacerated. Left lung contused. Heart healthy. Abdominal organs, scalp, skull and brain found healthy.

It is opined that death was due to shock and haemorrhage resulting from ante mortem injury to the lung which was caused by blunt object and homicidal in nature.

In the cross-examination the doctor stated that except the injures on the chest wall, other injuries were superficial. Injury nos. 2 and 3 are on the chest. Both the injuries are on the upper part of the chest wall. He has denied the suggestion that the aforesaid injuries were one and single injury caused by single impact. Abrasions were simple injuries. Contusion itself is a simple injury. The doctor could not definitely say whether such injuries were caused by pelting stones unless the circumstances and site of the occurrence are seen or studied. The doctor admitted that such injuries may also be caused by fall on hard substances or object.

16. As per the evidence on record it emerges that there was an altercation between the parties at the time of occurrence and the accused appellants pelted stones, bricks upon the deceased and the deceased ran away from the place of occurrence and fell down by sustaining injury and he was immediately taken to hospital wherein he succumbed to his injury. It is from clear evidence that no other sort of sharp weapon was used by the accused appellants and only stones and brickbats were pelted to the deceased and that being so it can safely inferred that the accused never intended to cause death of the deceased, the incident occurred due to land dispute while erecting the bamboo fencing. Although the same aspect has not been divulged by the prosecution witness but the same is reflected from the FIR that was filed by the appellants side which ended in Final Report. In view of the eye witness to the occurrence there is no denial that after the incident said Monindra Singh succumbed to injuries and it also establish that the accused appellants formed unlawful assembly while conjointly attacked and assault the deceased. It is found that the learned trial Court has rightly arrived at a finding of guilt of the accused appellants U/S 148/149/304(i)IPC. But taking into note about the nature of assault and the simple injury sustained by the deceased as per the medical report where there is no vital injury and the fact that the accused appellant used only stones and brickbats, amount

of sentence appears to be on higher side. Considering the facts that the accused appellants were behind the bars since more than three years after delivery of judgment, the sentence is reduced to the period of detention already undergone.

17. The appeal is allowed to the extent as indicated above. Return the LCR.

**JUDGE**

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