

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM AND ARUNACHAL
PRADESH)

Criminal Appeal 398/2019

Anwar Hussain Barlaskar and another

.....**Appellants**

-Vs-

The State of Assam and another

.....**Respondents**

For the Appellant : Mr. A. Ahmed, Advocate.

For the Respondents: Ms. B. Bhuyan, APP, Assam

BEFORE

**THE HON'BLE MR. JUSTICE SUMAN SHYAM
THE HON'BLE MRS. JUSTICE MARLI VANKUNG**

Date of hearing : 26/10/2021 & 27/10/2021.

Date of judgement : 27/10/2021

JUDGEMENT AND ORDER (ORAL)

Suman Shyam, J

1. Heard Mr. A. Ahmed, learned counsel appearing for the appellants. We have also heard Ms. B. Bhuyan, learned APP, Assam, appearing for the State/respondent No.1. None has appeared for the informant/respondent no.2.

2. By filing this appeal, the two appellants have challenged the judgement and order dated 07/08/2019 passed by the learned Sessions Judge, Hailakandi,

in Sessions case No. 109/2016 convicting the appellants under Sections 341/302/34 of the Indian Penal Code (IPC) for wrongfully restraining and committing murder of Md. Faruk Uddin Laskar and sentencing each of them to undergo rigorous imprisonment for life and also to pay fine of Rs. 5,000/- each, in default, to undergo imprisonment for two months for the offence committed under Section 302 of the IPC and also to undergo simple imprisonment for one month for the offence committed under Section 341 of the IPC.

3. The brief facts and circumstances giving rise to the filing of the present appeal may be notice hereunder. On 08/02/2016, Md. Fariz Uddin Laskar had lodged an ejahar before the Officer-in-Charge of Hailakandi Police Station reporting that on 06/02/2016, at around 9 a.m. when his brother Md. Faruk Uddin Laskar was going to his vegetables field from their house, the accused persons, viz. Md. Altaf Hussain Barlaskar, Md. Anar Ali Barlaskar, Md. Nur Hussain Barlaskar and Md. Zakir Hussain Barlaskar, armed with *dao*, *lathi* etc. had brutally assaulted him out of some old grudge, thereby, causing grievous injuries and bleeding to him. At that time, his cousin Md. Mustafa Ahmed went there to save his brother but the accused persons had brutally assaulted him also thereby causing grievous injuries to Mustafa as well. Hearing hue and cry, he along with some other persons, went to the place of occurrence and saved them from the clutches of the accused persons. Thereafter, Md. Faruk Uddin Laskar and Mustafa were taken to the S.K. Roy Civil Hospital, Hailakandi in a

grievously injured state but since the condition of his brother (Faruk) was very critical, he was referred to the Silchar Medical College and Hospital (SMCH), wherein he has been undergoing treatment.

4. On receipt of the ejahar, Hailakandi PS Case No. 66/2016 was registered under Section 341/325/326/34 of the Indian Penal Code (IPC). However, since the victim succumbed to his injuries while undergoing treatment at the SMCH at Silchar, section 302 of the IPC was added.

5. The matter was taken up for investigation by the Police and during the course of investigation, the Investigating Officer (IO) had visited the place of occurrence, prepared rough sketch map, recorded the statement of the witnesses, seized the pieces of hard bamboo and arrested the accused persons. After the death of the victim, inquest was conducted over the dead body and the dead body as sent for post-mortem examination at the SMCH, Silchar. On being forwarded by the IO, the statement of witnesses, viz., Samsuddin Laskar, Mustafa Ahmed and Nurul Alam Laskar were recorded under Section 164 of the Cr.P.C.

6. After completing the investigation, the IO had submitted charge sheet against three accused persons, viz. appellant No.1 Md. Anwar Hussain Barlaskar, appellant NO. 2 Altaf Hussain Barlaskar and another co-accused Zakir Hussain Barklaskar. However, Nur Hussain Barlaskar was not sent up for trial since the IO did not find any evidence against him. Based on the charge-sheet,

charges were framed against the three accused persons under Sections 341/302/323/34 of the IPC. Since the accused persons had pleaded not guilty and claimed to be tried, the matter went up for trial.

7. In order to bring home the charges framed against the three accused persons, the prosecution side had examined as many as 14 witnesses. The statement of the accused persons under Section 313 of the IPC were recorded wherein, they had denied all the incriminating circumstances put to them. The defence side, however, did not adduce any evidence.

8. Based on the evidence adduced by the prosecution side, the learned trial Court was of the view that the prosecution had succeeded in establishing the charges brought against the two appellants beyond reasonable doubt and accordingly, went on to convict them and had awarded the sentences as mentioned herein above. However, the accused Zakir Hussain Barlaskar was acquitted due to want of evidence against him.

9. By referring to the evidence adduced by the prosecution side, Mr. Ahmed, learned counsel for the appellants has argued that from the testimony of the prosecution witnesses, it is self evident that two separate theories leading to the death of the victim have been propounded by the prosecution. While one such theory pertains to death of the victim due to injuries sustained by him on account of assaults made by the appellants, the other theory points towards an accidental death suffered by the victim due to head injuries received by him

upon falling from a height of 8-9 feet on the stems of cut bamboos having pointed edge. Mr. Ahmed has argued that the prosecution has failed to establish the charge against the accused persons beyond reasonable doubt and, therefore, the impugned judgement is unsustainable in the eye of law. The learned counsel for the appellants has further argued that if there is a doubt as regards the real circumstances under which the victim had died, benefit of such doubt must go in favour of the accused persons.

10. Mr. Ahmed further submits that from the evidence of PW 1 and 3, who have not been declared as hostile witness, it has come out that the victim had accidentally fallen down and suffered injuries leading to his death. Such evidence would be binding upon the prosecution side. Contending that the learned trial Court had committed an error in treating the PW-8 an eye witness to the occurrence, Mr. Ahmed has argued that the PW-8 did not see the occurrence and hence, he ought not to have been treated as an eye witness. On such count, the learned counsel for the appellants has prayed for setting aside the impugned judgement and order dated 07/08/2019 and set his clients at liberty. In support of his above arguments, Mr. Ahmed has placed reliance on the following decisions :-

- (i) *Raja Ram Vs. State of Rajasthan* reported in (2005) 5 SCC 272.
- (ii) *Sharifa Khatun & Ors. Vs. State of Assam & Anr.* reported in 2020(2) GLT 24.

11. Ms. B. Bhuyan, learned APP, Assam, on the other hand, has strongly opposed the submission made by the appellants' counsel to contend that there is sufficient evidence led by the prosecution to prove that there was altercation between the accused persons and the victim and the later was assaulted by the accused persons in the vital parts of his body leading to grievous injuries and death of the victim. She further submits that from the evidence available on record, it is established beyond doubt that it was none other than the appellants who had assaulted the deceased leading to his death. Therefore, the learned Court below has rightly convicted the appellants and awarded sentence of life imprisonment to them.

12. We have considered the arguments advanced by the learned counsel appearing for both the sides and have also carefully gone through the evidence brought on record. Since the basic arguments of the appellants' counsel is to the effect that the prosecution has failed to establish the charges brought against the appellants beyond reasonable doubt, it would be necessary for us to briefly refer to the evidence brought on record by the prosecution.

13. We find from the record that the informant in this case, viz. Fariz Uddin Laskar had expired before conclusion of the trial and, therefore, the informant could not be examined as an witness. However, the prosecution has proved the ejahar as Ext. 9.

14. Md. Altaf Hussain Mazumdar, who is a local resident of the village and known to the informant, was examined as PW-1. This witness has deposed that on the day of the incident, at about 8 a.m., when he was in the front side of his house, he had heard from the people that there was a quarrel between Altaf and Fariz, Samsuddin and Faruk. Having heard so, he went to the place of occurrence but did not find the accused persons there. Instead, he found Faruk Uddin (victim) in the place of occurrence lying in an injured condition. Faruk was then shifted to the hospital. Then he left the place. On the following day, Police had recorded his statement and obtained his signature in the seizure list Ext. 1.

15. During his cross-examination, PW-1 has stated that he had heard that the cow of accused Altaf had entered into the vegetable garden of Samsuddin by breaking the fencing, as a result of which, there was hot altercation between accused Altaf and Samsuddin. He had also heard that just before the incident, the deceased and his brother Samsuddin and Fariz Uddin being armed with *dao and lathi* were seen to be proceeding to the house of the accused Altaf and on their way, they found Altaf and made an attempt to kill him. When Altaf tried to flee, he was attacked by the said persons. PW-1 has further stated that he also heard that deceased Faruk had a *dao* in his hand. The witness has also stated that he had heard that when the deceased tried to assault the accused, he fell down on the stem of bamboos and sustained injuries on his head.

16. PW-2 Khalil Uddin is another resident of the locality who was known to the accused persons as well as the informant. PW-2 has also stated that there was "*marpit*" between Faruk and the accused persons, as a result of which Faruk had sustained injuries. He was later shifted to hospital. On the following day, he went to the place of occurrence and found that Police was there. The Police had seized one piece of bamboo and obtained his signature in the seizure Ext.-1. During his cross-examination, PW-2 has stated that Fariz Uddin i.e. the brother of the deceased had informed him about the incident over phone. He has further stated that the deceased was his relative and he had seen about 100 people from the neareby locality gathered at the place of occurrence when he had visited the spot. At that time, the Police personnel were also present.

17. Md. Mujamil Ali was examined by the prosecution as the third witness. PW-3 has also deposed to the effect that on the day of the incident, at about 7 a.m., when he was in his house, he heard a hue and cry and went near the place of occurrence and saw Faruk Mia there. Then he had heard that Altaf was going to the shop of Kerosene dealer so as to bring Kerosene and at that time, Faruk had chased Altaf. Consequently, a scuffle took place between Faruk and Altaf, as a result of which, Faruk slipped and fell down on the roots of cut bamboos. Thereafter, Faruk was shifted to the hospital and subsequently, he came to know that Faruk had died while undergoing treatment in the hospital.

18. During his cross-examination, PW-3 has categorically stated that on hearing the hue and cry, when he came out, he saw that Faruk was chasing Altaf being armed with a *dao* and at that time, the brothers of Faruk were along his side and they were also armed with *dao and lathi*. PW-3 has further stated that there is a public path which is to the west of his house and the said path runs towards north-south direction. At the relevant time when Faruk had made an attempt to inflict dao blow on Altaf, he slipped and fell down on the cut bamboos and become senseless. The PW-3 has also stated that on the day of the incident, the cow of Altaf had entered into the vegetable garden of Samsuddin, as a result of which, the later had assaulted the cow. The incident had triggered an altercation between Samsuddin and Altaf. Thereafter, Samsuddin went to his house and informed about the incident to his brothers. It was thereafter that the incident took place.

19. PW-4 Mizanur Rehman Mazumdar is the nephew of Samsuddin Laskar. PW-4 has deposed that on 06/02/2016 at about 7 a.m. in the morning when he was in his house situated near his shop, his uncle Samsuddin had informed him over phone that while his younger brother Faruk Uddin Laskar was proceeding by the side of E & D Bund, a hot altercation had taken place with Altaf and Anwar and then both of them had assaulted Faruk Uddin, as a result of which, the later has sustained grievous injuries. PW-4 had advised Samsuddin to take the victim to the hospital and accordingly, the victim was taken to the civil

hospital but considering the seriousness of his injury, the doctors had advised that the victim be shifted to the SMCH, Silchar, for better treatment. On the following day i.e. on 07/02/2016 at about 9 a.m. in the morning, his uncle Samsuddin Laskar had informed him that Faruk had succumbed to his injuries. During his cross-examination, PW-4 has stated that he did not see the occurrence nor did he visit the place of occurrence.

20. PW-5 Sri Nurul Alom Laskar is another resident of the same village and is known to the accused persons and the informant. PW-5 has deposed that on 06/02/2016 at about 10 a.m., while he was in his residence, on hearing a hue and cry coming from the eastern side of his house, he went there and found 40/50 people had gathered there. Faruk Uddin Laskar was lying in an injured and unconscious condition on the village path. He had seen injuries in the head of Faruk. His cousin Mustafa Ahmed (PW-10) was present there and blood was oozing from his head. On being asked, Mustafa Ahmed (PW-10) told him that he had dashed against something, as a result of which, he had sustained injury. PW-5 has also stated that he did not inquire as to how Faruk had sustained injuries. Both the injured persons had been shifted to the hospital at Hailakandi and later on, Faruk was referred to SMCH, Silchar. On the next day, at about 8 a.m., Faruk had succumbed to his injuries. During his cross-examination, PW-5 has stated that he had found Faruk lying in an injured condition under the bamboo bush, which was 10/12 ft. down from the village path. This witness has

also stated that there were many bamboos available at that place during the relevant time with the top portion cut. According to the PW-5, injured Faruk had perhaps sustained injuries due to falling on the ground on being pushed by someone. While they were lifting injured Faruk from the place of occurrence, Samsuddin (PW-8) i.e. the brother of the victim came to the place of occurrence. This witness has also stated that he had recorded his statement before the Magistrate on being influenced by the Police and that the Police did not record his statement.

21. PW-6 Samsul Haque Barlaskar has deposed that on the relevant date, at about 9/10 a.m. while he was working in the straw shed (kherer ghar) of Faruk Uddin, on wage, he had heard hue and cry coming from the path on the bank of river Katakhal, which was about one furlong away from the place where he was working. On hearing such cry, he went to the place and found Faruk lying on the ground in an unconscious state and about 10/15 people were trying to lift him from the place and were pouring water. Faruk was shifted to the hospital and on that night he came to know that he had succumbed to his injuries. One Mustafa, the cousin of the deceased had told him that the accused persons had killed Faruk.

22. PW-7 Rahena Begum Babhuiya is another prosecution witness who has deposed to the effect that on the day of the incident, at about 9/10 a.m. she had heard hue and cry and came out of her house to the path situated on the E

& D Bundh of the river Katakhal. Then she saw Faruk Uddin was lying on the ground and many people had gathered. Then she felt uncomfortable and left the place. Police had recorded her statement.

23. PW-8 Samsuddin Laskar is the elder brother of the deceased, who was examined by the prosecution as an eye witness to the incident. As noted above, the learned trial Court had also treated PW-8 to be an witness to the occurrence. PW-8 has deposed before the Court that on the day of the incident, at about 11-30 a.m. when he was in his house, at that time he had heard hue and cry coming from about 60 mtrs. north of his house, from the side of the NRP road. Immediately he had rushed to the road and from a distance of about 20 mtrs. he had seen accused Altaf Hussain Barlaskar running towards his house through the NRP road leaving behind a wooden piece. Following him, his relatives and other family members had also proceeded towards the place of occurrence. On reaching there, he saw the accused Anwar Hussain Barlaskar assaulting his brother by means of a thick bamboo piece and thereafter, left the place towards his house. Upon reaching the place, he found his brother Faruk lying on the ground of the path in an injured condition and he was senseless. PW-8 has also stated that his cousin Mustafa Ahmed Laskar (Pw-10) who had intervened with a view to resist the accused, also sustained injuries on his head.

24. During his cross-examination, PW-8 has stated that the accused Nur Hussain was implicated in the ejahar out of ignorance and mistake and that is

why an application was made before the Officer-in-Charge to strike out his name from the FIR. PW-8 has also stated that on his arrival at the place of occurrence, he found 15/20 people gathered there including ladies. The people who had gathered there had helped in shifting his brother from the place of occurrence to the house as well as to the hospital. PW-8 has also stated during his further cross-examination that amongst the 15/20 people, who were found present, Mustafa Ahmed Laskar (PW-10), Nurul Alom Laskar (PW-5) and one Khalil Uddin laskar were also found to be present at the place of occurrence, who had reached there before him. When he had reached the place of occurrence and went near his brother, he was unconscious. This witness has further stated that he saw accused Anowar Hussain assaulting his brother by means of a thick bamboo piece and thereafter, he started proceeding towards his house. This witness has, however, denied the suggestion made by the defence counsel to the effect that Faruk had slipped and fell down 8-9 cubit below the road in a bamboo bush and sustained injuries.

25. PW-9 Dr. Mujibur Rahman Mazarbhuiya was the doctor on duty at the S.K. Roy Civil Hospital, Hailakandi on 06/02/2016, who had examined Mustafa Ahmed Laskar (PW-10). PW-9 has proved his medical report (Ext-5) and has deposed before the Court that upon examining the PW-10, he had found one lacerated injury of size 2cm x 2 cm x 2mm over left parietal region of scalp, abrasion of size 3 cm x 2 cm over upper chest and soft tissue swelling of 2 cm x

2 cm over forehead. According to PW-9, all the injuries were fresh, simple and caused by blunt object.

26. PW-10 Sri Mustafa Ahmed Laskar is the injured witness who had apparently made an attempt to intervene in the altercation between the accused and the deceased and in the process, had received injuries, which were certified by the PW-9. PW-10 has also deposed that on 06/02/2016, at about 10 a.m. while he was in front of his house, at that time, upon hearing a hue and cry coming from the northern side of his house, he had gone to the place of occurrence and saw that accused Altaf was chasing Faruk and the later was running. At that time, Faruk fell down on the ground and Altaf had left the place. He saw huge bleeding coming from the head of Faruk and raised alarm. All his relatives came to the place of occurrence and shifted Faruk to the Hailakandi Civil Hospital. PW-10 has also stated that while trying to lift Faruk from the ground, he had also sustained injuries when a bamboo had touched his head. He had received treatment at the Civil Hospital, Hailakandi. In the next morning, he came to know that Faruk has died. At that stage, this witness was declared as a hostile witness.

27. During his cross-examination by the prosecution side, this witness had given a completely different version by stating that on the day of the incident, on hearing noise of some people, he had rushed to the place of occurrence and saw that accused Altaf Hussain Barlaskar, Anowar Ali and Zakir Hussain

Barlaskar were assaulting Faruk Uddin laskar with dao and a piece of bamboo and he tried to save Faruk. One of the accused persons had hit him on his head, as a result of which, he had to receive medical treatment.

28. During his cross examination by the defence side, he has given another version by stating that he had seen deceased Faruk chasing Altaf with a dao. At that time, Altaf was going towards the Fair Price Shop. Faruk had chased Altaf in front of his house. While chasing Altaf, Faruk slipped and fell over the lower part of the bamboo root, which was about 7/8 ft. below the path. At that time, there was a Kerosene jar at the hand of Altaf but no other weapon was in his hand. He had sustained injuries by falling on the bamboo root. At that time, Samsuddin was not there. PW-10 has also stated that the Police did not write anything in his presence and he had made his statement before the Magistrate on being tutored by the Police as well as under threat.

29. PW-11 Dr. Gunajit Das was posted as Associate Professor, Forensic Medicine at the SMCH, Silchar on 07/02/2016. PW-16 had conducted post-mortem examination on the dead body of Faruk Uddin Laskar and submitted the post-mortem report Ext.-7. PW-11 has proved the Ext-7. According to the post-mortem report, the following injuries were found in the dead body:-

Injuries :-

(1) Stitched wound present in the scalp over temporo parietal region of size 8cm, on removal of stitches, the wound was found lacerated of

size 8 cm x 1 cm, margins abraded and surrounding tissues were found contused.

(2) Defused contusion of both scalp which was visible after reflection.

(3) Depressed comminuted fracture of size 10 cm x 8 cm over frontal and both right and left parietal and temporal bone with radiating fracture extending up to occipital bone.

(4) Defused sub-dural hemorrhage involving both the cerebral hemisphere.

(5) There was no ligature mark found on the neck and neck tissues were found healthy on dissection.

(6) Thoracic organs and abdominal viscera found congested.

(7) Rest of the organs were found healthy.

PW-11 has opined that death was due to comma as a result of the injuries sustained in the head as described above. All the injuries were ante mortem and caused by blunt force impact.

During his cross examination, PW-11 has stated that it cannot be said directly that the injury was caused by falling but it may be so.

30. PW-12 Sri Abdul Basit was the Sub-Inspector (SI) of Police attached to the Hailakandi Police Station, who took over the investigation in connection with Hailakandi Police Station case No. 66/2016 from the previous IO, viz. PW-13. PW-12 has stated in his evidence that the matter was entrusted to him at the stage when the investigation in the connected P.S. case was almost completed by the previous IO. After examining the complainant and the other witnesses, he had submitted charge sheet against the three accused persons. PW-12 has

proved the charge-sheet Ext-8. During his cross examination, PW-12 has stated that the place of occurrence has been shown under mark 'C' in the sketch map and that in both the sides of the place of occurrence, there are bamboo bushes.

31. PW-13 Sri Sajal Chandra Deb was the S.I of Police attached to the Hailakandi Police Station on 06/02/2016 i.e. the date of the incident. After the registration of Hailakandi PS case No. 66/2016, he was entrusted with the task of carrying out investigation by the Officer-in-Charge of the Police Station. PW-13 has deposed before the Court narrating in details, the various steps taken by him during the course of investigation. During the course of his cross-examination, PW-13 has also confirmed that PW-6 did not state before him that Mustafa (PW-10) had reported to him that the accused persons had killed Faruk. PW-13 has further stated that PW-8 also did not state before him that he had realized from the pose of Altaf Hussain that he was assaulting his brother Faruk Uddin Laskar.

32. PW-14 Sri Sarat Chandra Bora was posted as a Sub-Inspector of Police at the Ghungoor Police Out Post, Silchar. PW-14 was asked to make arrangements for conducting inquest and post-mortem examination over the dead body of Faruk Uddin Laskar. This witness has deposed that inquest over the dead body was conducted by Executive Magistrate Sri Jagadish Brahma and Ext. -11 was the inquest report bearing the signature of the Executive Magistrate, which he could identify. PW-14 has further stated that the post-mortem examination was

conducted at the SMCH, Silchar, where-after, the dead body was handed over to the guardian of the deceased.

33. Upon examining the statement of the accused persons recorded under Section 313 of the Cr.P.C., we find that over and above denying all the incriminating circumstances put to them, the accused/ appellant no.2 Altaf Hussain Barlaskar has also stated that on the day of the incident, at about 7 a.m., his cow had damaged the bamboo fencing of the vegetable garden of Samsuddin Laskar i.e. the elder brother of Faruk uddin Laskar. Then he had sent a boy to get back his cow to his house. At about 8 a.m. while he was going to fetch Kerosene Oil from the dealer, as soon as he had reached in front of the house of faruk, the later came out with a dao to assault him. Out of fear, he ran towards his house. After some time, he heard that Faruk had sustained injuries by falling on the ground after having slipped on the road. He had heard that Faruk was shifted to the hospital and on the next day, he died. This accused person has further stated that he was innocent and has been falsely implicated.

34. After evaluating the evidence brought on record, we find that the learned trial Court has laid sufficient emphasis on the evidence of PW-8 so as to come to the conclusion that the appellants herein had assaulted the deceased Faruk Uddin Laskar by a piece of bamboo causing grievous injury on his body, which had ultimately resulted in his death. However, from a careful reading of the evidence of PW-8, we find that this witness did not claim to have seen accused

Altaf Hussain Barlaskar assault Faruk Uddin laskar. Rather, an inference was drawn by him from the pose (posture) of Altaf which led him to believe that Faruk had been assaulted by Altaf Hussain Laskar. PW-8 has no doubt stated in his evidence that he had seen the co-accused Anowar Hussain Barlaskar assaulting Faruk Uddin Laskar by means of a thick bamboo and thereafter, leave the place. However, it is to be noted herein that this witness has also deposed to the effect that when he had reached the place of occurrence, he found his brother Faruk lying on the ground of the pathway in an injured condition and he had found about 15-20 people had gathered there including ladies, who had helped him to shift his brother from the place of occurrence to their house as well as to the hospital. The question of shifting the victim to the hospital would obviously arise after the incident had taken place and not before the occurrence.

35. From the statement of PW-8, it appears that he had reached the place of occurrence after the incident took place and by that time, Faruk, who had apparently fallen down about 8-9 ft. from the NRP road was lifted to the pathway by the persons who had gathered therein. PW-10 has been declared to be a hostile witness. However, what must be borne in mind is that the PW-10 is an injured witness and his presence in the place of occurrence is not in dispute. It appear that he is the one who had seen the occurrence. Although, PW-10 has made some contradictory statements in his cross-examination

conducted by the prosecution side, thereby impeaching his credibility as a witness, yet, from his examination-in-chief as well as his cross-examination by the defence side, it has come out that he was not only amongst one of the few persons who were present at the place of occurrence when the incident took place and had made an attempt to rescue the victim but he had also sustained injuries. It has clearly come out from the evidence of PW-10 that it was Faruk who had slipped and fell over the bamboo roots at a depth of 7-8 ft. from the path while trying to chase Altaf. The aforesaid version of PW-10 finds due corroboration from the evidence of PW nos. 1 and 3.

36. We also find that PW-5 has categorically deposed that PW-8 had reached the place of occurrence while they were trying to lift the injured Faruk from the place of occurrence to the pathway. PW-5 has also stated that on being asked, PW-10 had told him that he had sustained injuries upon hitting something. The testimony of PW-5 appears to be consistent and free from contradiction and, therefore, inspires confidence of this Court. If PW-5 is believed then it is evident that PW-8 had arrived at the place of occurrence after the incident took place and when the injured person was in the process of being shifted from the place of occurrence to the hospital. PW-8 has himself stated during his cross-examination that when he reached the place of occurrence, his brother was unconscious. At that stage, none of the witnesses have mentioned above the presence of the accused persons in the place of occurrence. Therefore, it is

difficult to believe that PW-8 had actually seen the occurrence. The version of the PW-8 also does not find corroboration from the evidence of any other witnesses examined by the prosecution side.

37. The medical evidence in this case merely indicates injuries sustained by the victim by blunt force impact and the doctor i.e. PW-11 has not ruled out the possibilities of the injuries having been sustained due to falling on the ground.

38. It is also established from the evidence available in record that the place of occurrence is adjacent to a elevated pathway constructed over E & D Bundh at a height of about 7-8 ft. and, therefore, it is possible that in an attempt to assault the accused persons, the victim himself might have slipped and fallen down at a depth of 8-9 ft. and sustained head injuries.

39. From the testimony of prosecution witnesses, viz. PWs 1 and 3, it has clearly come out that on the day of the incident, an altercation took place between the victim and the accused persons following an incident whereby, the cow of the accused persons had entered into the vegetable garden of the victim's brother by breaking the fence. The testimony of these witnesses, read in the context of statement made by accused Altaf Hussain Barlaskar, clearly goes to show that it was the victim and his brothers who were the aggressors in this case and it was the victim Faruk who had actually tried to attack Altaf Hussain Barlaskar while he was going to the Fair Price Shop to fetch Kerosene Oil. There is nothing on record which contradicts the aforesaid version. Since

the above story has come out from the evidence of the prosecution witnesses, in view of the law laid down by the Hon'ble Supreme Court in the case of *Raja Ram (Supra)* which was followed by this Court in the case of *Sharifa Khatun (Supra)*, such evidence, if pressed into service by the defence counsel, would be binding upon the prosecution.

40. Viewed from that angle, we are constrained to hold that the evidence adduced by the prosecution strongly suggest that pursuant to an altercation between the victim and the accused persons, the deceased Faruk Uddin Laskar had accidentally fallen down and received head injuries from the exposed stems of the bamboo, which had resulted into his death. It is possible that due to the altercation there was a scuffle between the victim Faruk and accused Altaf. But there is no evidence adduced by the prosecution to show that the accused persons had actually assaulted the victim with an intent to cause death to him.

41. For the foregoing discussions, we are of the view that the prosecution has failed to prove the murder charge brought against the appellants under Section 302 of the IPC.

42. In the result, this appeal succeeds and is hereby allowed.

43. The conviction of the appellants is hereby set aside and they are acquitted due to want of evidence against them.

44. The impugned judgement and order dated 07/08/2019 passed by the learned Sessions Judge, Hailakandi stands interfered with.

45. We are informed that the appellant Anowar Hussain Barlaskar is in jail. As such, we hereby direct that the appellant, viz. Anwar Hussain Barlaskar be forthwith released from jail if his detention is not found to be necessary in connection with any other case. The bail bond of appellant Altaf Hussain Barlaskar, who is out on bail, would stand discharged.

Send back the LCR.

JUDGE

JUDGE

Sukhamay