

**G.R Case No-2061 of 2012
(State of Assam Vs Md. Amir Ali &Ors)**

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR:: TEZPUR

G. R. Case No-2061 of 2012

Under section-147/148/149/323/324/326 of I.P.C

Present:- **Sri N. J. Hoque, AJS,
Chief Judicial Magistrate,
Sonitpur, Tezpur**

State of Assam

-Vs-

1. Amir Ali
2. Md. Abdul Hamid
3. Md. Abdul Azit
4. Md. Kajimuddin
5. Md. Abdul Barek
6. Md. Abdul Rahim
7. Md. Hasmata Ali

All are R/O:-KeherukhandaPathar

P/S:-Dhekiajuli

Dist:-Sonitpur, Assam

.....Accused Persons

Advocate appeared:

Mr.N. K. Mishra, Addl. P.P..... For the State

Mr.S. K. Alam, Ld. Senior Advocate.....For the accused persons

Evidence recorded on	:-25.10.2016, 27.03.2017, 13.09.2018 19.06.2019, 01.02.2021& 29.09.2021
Charge Framed on	:-20.07.2013
Date of Statement of defence	:- 30.03.2021
Argument heard on	:-05.10.2021& 25.10.2021
Judgment delivered on	:-09.11.2021

J U D G M E N T

History of Prosecution's Case

1. Prosecution case appears to be in a nutshell is that one Md. Hatem Ali lodged an Ejahar before the O/C of Dhekiajuli P.S alleging inter alia that on 15.08.2012 at

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9 AM, his neighbours, namely, Md. Amir Ali, Md. Azid, Md. Rahim, Md. Hasmat, Md. Hamid Ali, Md. Kajim Uddin, Md. Kitab Ali, Md. Abdul Barek and Md. Ibrahim due to some previous grudge illegally entered into the house of his brother named Md. Hasen Ali armed with lathis, dao, spade (Kudal), bolom (Spear) etc. and stabbed his brother Md. Hasen Ali with dagger and due to that his brother sustained grievous injuries. It is also alleged that accused persons, namely, Md. Hussain Ali and Md. Abed Ali also struck his brother Md. Hasen Ali and for which his brother sustained cut injuries.

"INVESTIGATION"

2. On receipt of the ejahar, Dhekiajuli P.S Case No-355 of 2012 under sections-147/148/149/447/326 of Indian Penal Code was registered and investigation into. On completion of the investigation, the Investigating Officer of this case submitted charge sheet under sections-147/148/149/447/323/324/326 of Indian Penal Code against the accused persons, namely, Md. Hasmat Ali, Md. Abdul Hamid, Md. Abdul Azit, Md. Kajimuddin, Md. Abdul Barek, Md. Abdul Rahim and Md. Amir Ali.

CHARGE & TRIAL

3. In pursuant to the court's process, the accused persons appeared before the court and they were allowed to go on bail and consequently, copies u/s-207 of Cr.P.C was furnished to the accused persons. After hearing both side, charge of offence under sections-147/148/149/323/324/326 of Indian Penal Code were read over and explained to the accused persons by my Ld. Predecessor in office, to which they pleaded not guilty and claimed to be tried.

STATEMENT OF DEFENCE

4. The prosecution side to prove the guilty of the accused person examined as many as 09 (Nine) numbers of witnesses including the informant, victim, Investigating Officer and the Medical Officer in support of this case. Accused persons were examined u/s-313 Cr.P.C and their pleas of denial were recorded in separate sheet and the same kept with the case record. To strengthen the

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defence, the accused persons have also adduced one witness as DW-1 named Sri Rabindra Kumar Sarkar.

ARGUMENT

5. I have heard arguments of both sides and gone through the case record in the backdrop of evidences offered before this court by prosecution side.
6. **The points for determination in this case are:-**
 - (i) **Whether on 15.08.2012 at about 9 AM at a place called KeherukhandaPathar under Dhekiajuli PS, all the accused persons forming an unlawful assembly in prosecution of the common object of the said assembly committed rioting with Hasen Ali and thereby committed an offence punishable under section-147 of Indian Penal Code?**
 - (ii) **Whether on the same date, time and place, all the accused persons were the members of an unlawful assembly armed with a deadly weapon like sword, dagger, spade etc. committed rioting with Hasen Ali with intend to cause hurt which likely to cause death and thereby committed an offence punishable under section-148 of Indian Penal Code?**
 - (iii) **Whether on the same date, time and place all the accused persons were the members of an unlawful assembly in prosecution of the common object to cause hurt/grievous hurt which is likely to be committed in prosecution of common object of the said assembly and thereby committed an offence punishable under section-149 of Indian Penal Code?**
 - (iv) **Whether on the same date, time and place all the accused persons caused voluntarily hurt to one Md. Abed Ali and thereby committed an offence punishable under section-323 of Indian Penal Code?**

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- (v) **Whether on the same date, time and place, all the accused persons voluntarily caused hurt to Md. Hasen Ali by means of a sword, which is an instrument of cutting or which used as a weapon of offence is likely to cause death and thereby committed an offence punishable under section-324 of Indian Penal Code?**
- (vi) **Whether on the same date, time and place, all the accused persons voluntarily caused grievous hurt to Md. Hasen Ali by means of a sword, which is an instrument for stabbing etc. and thereby committed an offence punishable under section-326 of Indian Penal Code?**

EVIDENCES OF PROSECUTION SIDE

7. In this case prosecution side to prove the contentions of the ejahar examined as many as nine numbers of witnesses including the informant, victims, medical officer and the investigating officer. To support the defence, the accused persons have also adduced one witness as DW-1 named Sri Rabindra Kumar Sarkar. Let us reproduce the relevant part of the evidences adduced by each witness for the sake of proper appreciation.
8. PW-1, Md. Hatem Ali being the informant of this case deposed before the court that he knows the accused persons of this case. He also deposed that on 15.08.2012 at about 9 AM, when he heard hue and cry from the house of his brother Hasen Ali, he immediately went to his house and saw Amir Ali was cutting the banana tree of his brother Hasen Ali's house and when his brother resisted to the said act of the accused person, the accused Amir Ali had assaulted his brother Hasen Ali by means of a sword in his hand, head, neck and his back. Thereafter, the accused persons left the house of his brother and went away. He also deposed that thereafter he along with his injured brother went to Dhekiajuli PS, from where his brother was sent for medical examination to Dhekiajuli PHC. He further deposed that however, his brother was referred to Tezpur Civil Hospital and accordingly, they bought their brother to the

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Kanaklata Civil Hospital, Tezpur but he was referred to Guwahati for further advance treatment. Thereafter, he took his brother to Dispur Hospital, where his injured brother was treated. He identified his ejahar as Ext-1 wherein he put his signature as Ext-1 (1).

9. PW-1 in his cross-examination testified that the accused person's father Kitab Ali had lodged a case against them in connection with the same occurrence and the said case is pending in this Court for trial. He also deposed that he had no knowledge of any civil dispute between Kitab Ali and Hasen Ali in connection with land matter. He further deposed that he was not present when the court officials had handed over the land to the accused person's side in view of the execution order of the Court. He also deposed that on the date of occurrence, he was at his home. He further deposed that his house is at a distance from the place of occurrence. He deposed that there is a bye lane in front of his house. He also deposed that the accused person's land is adjacent to his brother Hasen Ali's house and the said land of the accused person is an agricultural land and the banana trees which were cut on the date of alleged incident were located on the northern boundary of the land between the accused person and his brother. He denied the fact that he was lying that police had not come to them for enquiring of the case which the accused person's father Kitab Ali had lodged against them. He denied the fact that when the father of the accused person Kitab Ali was making drain in his field, they obstructed and assaulted Kitab Ali and when the accused persons came to save their father from their clutches, they assaulted the accused persons as well. He further denied the fact that in connection with that matter GR Case No-2062/12 is pending before this court for trial. He also denied the fact that he deposed falsely that the accused Amir Ali had assaulted his brother Hasen Ali by means of a sword in his hand, head, neck and his back. He also denied the fact that his brother Hasen Ali did not sustain any injury in his hand, head, neck and his back. He deposed that at the time of incident nearby people had gathered near the place of occurrence and

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had witnessed the alleged incident. He further deposed that they have first taken the injured Hasen Ali to Dhekiajuli PHC, from where he was referred to KCH, Tezpur and thereafter to the Dispur Hospital Guwahati where his injured brother was attended by the doctors. Moreover, he deposed that the doctors of Dhekiajuli PHC and KCH, Tezpur had seen the injuries of his brother. He denied the fact that his injured brother had not sustained any injuries as had been stated by him in the court. He further denied the fact that he along with his brother have unlawfully entered into the field of the accused persons and had assaulted their father. He denied the fact that they have lodged this case against the accused persons falsely in order to save themselves from the assault which they have committed upon the father of the accused persons. He deposed that he had lodged the ejarah on 15.08.2012 but he did not remember the exact time when he lodged the ejarah of this case. He also deposed that when the police came at the place of occurrence he was not present since he was with his injured brother at that time. He further deposed that immediately after the occurrence they have taken the injured to the hospital. He denied the fact that he was concealing the fact that he has knowledge about the civil dispute pending between Kitab Ali and his injured brother's side.

10. PW-2, Must. Firuja Begum deposed before the court that she knows the informant the accused persons of this case. She also deposed that on 15.08.2012 at about 9 AM, she heard noise from outside of her house and when she came out she saw accused Amir Ali was cutting banana trees of their house. She further deposed that when Hasen Ali obstructed accused Amir Ali from cutting the banana trees the accused Amir Ali assaulted Hasen Ali by means of digging hoe (Kodal) in his back and head and accused Abdul Ajish, Abdul Barek, Abdul Hamid and Abdul Rahim had accompanied accused Amir Ali while the later was assaulting Hasen Ali.
11. PW-2 in her cross-examination testified that the distance between her house and that of Hasen Ali is almost 100 mtrs. She also deposed that she was

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sweeping her house at the time of incident. She further deposed that the noise came from the eastern side of her house and she then proceeded to the noise and saw the accused person Amir Ali assaulting Hasen Ali near Hasen Ali's house. She also deposed that the incident took place in an open field. She deposed that she had been staying near the house of Hasen Ali for almost 16 years. She also deposed that she did not know if any land dispute is going on between Kitab Ali and Hasen Ali and she even also did not know the lands details of the parties involved in this case. She further deposed that she did not know the owner of this land where the dispute had taken place between the parties of this case. Moreover, she deposed that she had only seen the accused person Amir Ali assaulting Hasen Ali. She further deposed that she did not know who took away Hasen Ali after the alleged incident. She deposed that she did not know if any hue and cry had arisen at the time of incident. She also deposed that she did not go near the place of occurrence and after seeing the occurrence she went to her house. She denied the fact that she has not seen the accused person Amir Ali assaulting Hase Ali and being accompanied by Abdul Ajish, Abdul Barek, Abdul Hamid and Abdul Rahim.

12. PW-3, Md. Hasen Ali deposed before the court that the informant is his younger brother and the accused persons of this case are known to him. He also deposed that on 15.08.2012 at 9 AM, all the accused persons entered into their house and forcefully started cutting their banana trees and when he resisted to the said act of the accused person, accused Amir Ali had assaulted him with a sword on his head. He further deposed that accused Hamid also pushed him with spear (Bollom) and accused Ajit stabbed him with spade on the back side of his neck. He also deposed that accused Amir caused him injured with a sword on his right hand, back and various parts of his body (The witness shown the marks of injury on his hand). Thereafter, he became senseless. He also deposed that he found his sense at Dispur Clinic, Guwahati. He further deposed that he stayed at Guwahati for about five days.

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13. PW-3 in his cross-examination testified that there was no any land boundary dispute pending between them and Kitab Ali since long. He also deposed that a civil case is pending between both parties. He deposed that Kitab Ali is the father of the accused persons. He also deposed that Kitab Ali got the decree of the disputed land between them and the court officials had handed over the land to him in view of the execution order of the Court. He deposed that there was a road located on the eastern side of the land of the informant. He further deposed that the house of Kitab Ali located on the northern side and his house is located on the southern side. He also deposed that there was a case for the land that situated between his house and the house of Kitab Ali. He further deposed that the houses of Kajumuddin, Bareek situated on the eastern side of his house. He also deposed that police interrogated him in connection with this case after returning back from Guwahati. He denied the fact that he had stated before the police that a land border dispute is between him and Kitab Ali since long. He further deposed that in connection with the instant incident accused Kitab Ali had also lodged a case against him; Hatem Ali, Abed Ali and Baharul Islam vide GR Case No-2062 of 2012. He denied the fact that he had not stated before the police that Amir stabbed him on his head causing cut injury, Hamid pushed him with spear (Bollom), accused Ajit stabbed him with spade on the back side of his neck and further Amir caused him injuries on his right hand, back and various parts of his body. He deposed that he returned to his house from Guwahati Hospital after five days. He denied the fact that Kitab Ali after getting execution of the disputed land from the court while he was making paddy route (drain) in the said land for farming, he along with other co-accused persons pelted bricks on Kitab Ali and when he started shouting, his family member went there and tried to rescue him from them, thereafter, his family (PW-3) members also came to there and started physically assaulted the family members of Kitab Ali and caused them injuries. He denied the fact that accused did not cause him any injury.

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14. PW-4, Md. Hussain Ali deposed before the court that informant Hatem Ali is his brother and the accused persons are known to him. He also deposed that the incident took place around three years back. He further deposed that he came to know that there was commotion took place near the house of Hasen and on being came to know about the same, when he went there the other people told him that someone stabbed Hasen and due to that he sustained injuries. He also deposed that Amir Ali also stabbed his hand with a sword (Tarowal).
15. PW-4 in his cross-examination testified that his house is about 200 yards away from the place of occurrence. He also deposed that he could not remember who informed him about the incident. He further deposed that Hasen Ali is his older brother. He denied the fact that Amir Ali had not stabbed him in his hand with a sword (Torowal). He deposed that he was treated at Dhekiajuli PHC. He further deposed that he sustained injuries on his left hand (beneath the wrist). He denied the suggestion that the doctor did not find any injury on his left hand. He also deposed that he went to the hospital immediately after the incident. He denied the suggestion that no such incident had happened as deposed by him and he only deposed for the sake of his brother. He further denied the fact that on the date of alleged incident, he along with Abed Ali and Baharul illegally entered into the land of accused and physically assaulted the father of accused and caused him injuries. He denied the fact that in connection with same incident the accused side also lodged a case against them.
16. PW-5, Md. Abed Ali deposed before the court that he knows the informant and the accused persons of this case. He also deposed that the incident took place around four years back. He further deposed that on the date of incident he heard commotion in the house of Hasen Ali and at the relevant time he was sleeping at his home. He also deposed that when he went there accused Berek had beaten him with lathi on his head and thereafter, he returned back to his house.

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17. PW-5 in his cross examination testified that he did not know about the land of Kitab Ali. He further deposed that he also did not know whether there was any land dispute took place between them or not. He also deposed that he did not know as to why the incident took place between the parties and as to why Berek had physically assaulted him on his head. He deposed that Kitab Ali, the father of the accused persons also lodged a case against them and in that case he is an accused person. He further deposed that accused Berek had not caused him injuries with lathi on his head.
18. PW-6, Md. Raizul Islam deposed before the court that he knows the informant Hatem Ali and the accused persons of this case. He further deposed the incident took place on 15.08.2012 at about 9 AM at the house of Hasen Ali. He also deposed that on the date of alleged incident, the accused persons entered into the boundary of victim Hasen Ali to cut banana plants with dao and dagger and when Hasen Ali resisted to the said act of the accused person, the accused had assaulted Hasen Ali on his hand, head, neck and his back with the said weapon i.e. dao, dagger etc. around 10 to 12 times and due to that Hasen Ali became senseless. He also deposed that on hearing hue and cry, he went to the place of occurrence and on seeing him the accused persons fled away from the place of occurrence. Thereafter, they took Hasen Ali to the hospital for his treatment. He further deposed that the accused persons did not do anything with him. He also deposed that as the injuries sustained by Hasen Ali had grievous in nature, he was immediately referred to Guwahati.
19. PW-6 in his cross-examination testified that Hasen Ali is his father and he used to reside with his father. He also deposed that he did not know whether there is any civil case pending regarding the disputed land between his father and the accused persons or not. He further deposed that he also did not know whether the said disputed land had handed over to the accused persons or not. He denied the fact that the civil court had handed over the land to the accused persons in view of the execution order of the Court in connection with T.S. Case

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No-04 of 2009. He deposed that the banana plants were located on the northern side of his house. He also deposed that there was a village road in between his house and the house of accused persons and the house of Kitab Ali was situated on the northern side of the of the vacant land. He further deposed that he did not know whether there was any case i.e. T.S. Case No-35 of 2003 is pending regarding the vacant land between his father and the father of accused Kitab Ali. He denied the fact that Kitab Ali after getting execution of the disputed land from the court while the accused father named Kitab Ali was making paddy route (drain) in the said land, then they resisted to the said act of Kitab Ali and further physically assaulted him. He also deposed that Kitab Ali also lodged a case against them relating to the said land. He denied the fact that they have physically assaulted them, so that, the accused side had lodged a case against them. He further deposed that there was no any public gathered at the place of occurrence. He also deposed that at the time of incident he was sitting in his house and on hearing hue and cry, he immediately went to the place of occurrence and saw the physical assault done by the accused persons. He denied the fact that the accused persons had not assaulted his father and he had not seen the physical assault done by the accused to his father. He denied the fact that he was concealing the truth and had deposed falsely in the Court. He also denied the fact that the accused persons did not cut any trees and when the father of accused Kitab Ali making paddy route (drain) they have physically assaulted his father and on seeing the same the accused persons resisted them to the said act. He also deposed that he did not know whether police had seen the cut banana trees or not as he took his father to the hospital. He further deposed that he could not say who were present at his house when he took his father to the hospital. He also did not know who had shown the place of occurrence to the police. He denied the fact that he deposed falsely before the court for the sake of his father. He also deposed that he had not stated before the police that he was physically assaulted by the accused.

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20. PW-7, Must. Afia Begum deposed before the court that she knows the informant and the accused persons of this case. She also deposed that the incident took place on 15.08.2012 at about 9 AM at the house of Hasen Ali. She also deposed that on the date of alleged incident she was at her house and on hearing hue and cry she went to the house of Hasen Ali and saw the accused persons were cutting down the banana trees of Hasen Ali and when Hasen Ali resisted the accused persons to the said act, the accused persons physically assaulted Hasen Ali with dao, sword (Tarowal) and due to that Hasen Ali became senseless. Thereafter, Hasen Ali was taken to Jangalbosti and from there he was shifted to Tezpur Medical for his treatment and further from there he was also referred to Guwahati for his better treatment. She also deposed that the accused persons also physically assaulted the brother of informant named Abed Ali.
21. PW-7 in her cross-examination testified that her husband named Hussain Ali is the brother of Hasen Ali and she is the sister-in-law of the informant Hasen Ali and they used to reside just adjacent to the house of informant. She further deposed that there was a vacant land in front of the house of Hasen Ali and the house of Kitab Ali situated after the said vacant land. She also deposed that she did not know whether there was any case pending between Hasen Ali and Kitab Ali in connection with the said vacant land or not. She further deposed that she had not witnessed that the land had handed over to Kitab Ali in view of the execution order of the Court. She also deposed that the incident took place just near the kitchen of Hasen Ali. She further deposed that there were banana trees situated in front of the said kitchen and the said banana trees were cutting by the accused Amir Ali. She also deposed that on the date of alleged incident her husband was at home and on hearing commotions she along with her husband went to the place of occurrence and also they have seen the alleged incident. She denied the fact that she and her husband did not go to the place of occurrence and had seen the incident. She denied the fact that she had not stated before the police that the accused persons had cut the banana tree of

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Hasen Ali which was situated in front of the kitchen of Hasen Ali and she presented concocted story before the court. She denied the fact that she had deposed falsely for the sake of informant Hasen Ali.

22. PW-8, Sri Dharani Dhar Deka (Retired) being the investigating officer of this case deposed before the court that on 15.08.2012 he was working at Dhekiajuli PS as second officer and on that day, one FIR has been lodged by Hatem Ali which was received by then O/C Ananta Das, who later registered the same as Dhekiajuli PS Case No-355 of 2012, under sections-147/148/149/447/326 of IPC. Thereafter, the O/C entrusted him with the investigation of the case. He also deposed that thereafter, he went to the place of occurrence, prepared sketch map, recorded the statement of the witnesses and also sent the victims for medical treatment. He further deposed that there were five victims who were sent to 30 bedded Dhekiajuli CHC and also collected the medical reports of the victims. He further deposed that he arrested the accused persons and forwarded them to the court. He also deposed that on finding sufficient evidence, he submitted charge-sheet under section-147/148/149/447/323/324/326 of IPC against the accused persons, namely, Amir Ali, Abdul Rahim, Abdul Aziz, Abdul Hamid, Hasmat Ali, Abdul Barek and Kajimuddin, who were shown as an absconder. He identified the ejahar as Ext-1 wherein Ext-1(2) is the signature of then O/C Ananta Das. He also identified the sketch map as Ext-2 wherein he put his signature as Ext-2(1). He further identified the medical reports as Ext-3 and the charge sheet as Ext-4 wherein he put his signature as Ext-4(1).
23. PW-8 in his cross-examination testified that the dispute has arisen due to agricultural land. He also deposed that the dispute has arisen for the reason of releasing water to the paddy field. He also deposed that he did not know if any case has been lodged by the accused persons against the informant and he has not seen any GD Entry in the P.S. He further deposed that he has not seen any paper relating to civil suit. He also deposed that in his sketch map, the "B"

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denotes the abandoned land of Kitab Ali and "C" denotes the house of Kitab Ali and "D" denotes house of Hasen Ali. He deposed that the place of occurrence is shown at the boundary of "B" and "D" and has been denoted as "A". He further deposed that he has not taken the signature of any witness on the sketch map. He denied the fact that he has shown the place of occurrence wrongly on the sketch map. He also deposed that he did not know if any case has been lodged in Dhekiajuli PS as 2062 of 2012 and he also did not know if Rabindra Sarkar has found the place of occurrence on the land of Kitab Ali relating to that case. He denied the fact that the informant has wrongly entered into the land of Kitab Ali and beaten him, which Kitab Ali has owned by way of civil suit. Moreover, he deposed that Ext-3 was collected by him and he has sent the requisition to Dispur hospital on 05.09.2012 and he collected it on 09.09.2012. He admitted the fact that PW-3 Hasen Ali has stated before him that there was dispute regarding the boundary of land with Kitab Ali since long. He also admitted the fact that PW-3, Hasen Ali has not stated before him that accused Hamid pushed him with spear (Bollom) on his head and accused Ajit stabbed him with spade on the back side of his neck and further Amir Ali had assaulted him by means of a sword (Torowal) and caused him injuries on his right hand, back and various parts of his body and also sustained cut injury on his head. He admitted the fact that witness Afiya Begum has not stated before him that the accused persons had cut the banana trees of Hasen Ali which was located near the kitchen of Hasen Ali but she has stated before him that the accused had cut the banana trees of Hasen Ali which was located in front of his house. He denied the fact that he has not properly shown the place of occurrence on the sketch map and he has submitted charge sheet mechanically. He also denied the fact that he has not verified the ownership of the place of occurrence by calling mandal.

24. PW-9, Dr. Koushik Bhuyan Keot being the medical officer of this case deposed before the court that on 15.08.2012, he was working as medical officer under NHM, Dhekiajuli CHC and on that day, he examined Md. Hasen Ali, Md. Abed Ali,

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Md. Hatem Ali, Md. Rajjul Ali and Must. Afiya Begum. Thereafter, on 30.08.2012 he submitted report for Md. Hussain Ali and Md. Abed Ali. He also deposed that on 23.08.2012 he submitted report for Md. Rajjul Ali, Md. Hatem Ali and Must. Afiya Begum. He deposed that on examination he found as follows:-

- (i) Md. HasenAli:- Vitals were normal. Chest, cardio logical and abdomen were found normal. Impression was simple injury caused by sharp weapon.
- (ii) Md. Abed Ali:- Vitals were normal. Chest, cardio logical and abdomen were found normal. Impression was simple injury caused by blunt object.
- (iii) Md. Hatem Ali:- Vitals were normal and other systemic examination were found normal. Impression was given simple injury caused by blunt object.
- (iv) Md. RajjulAli:- Vitals were normal and other systemic examination were found normal. Impression was given simple injury caused by blunt object.
- (v) Must. AfiyaBegum:- Vitals were normal and other systemic examination were found normal. Impression was given simple injury caused by blunt object.

He identified the medical reports as Ext-5, Ext-6, Ext-7, Ext-8 and Ext-9 wherein he put his signatures as Ext-5(1), Ext-6(1), Ext-7(1), Ext-8(1) and Ext-9(1).

25. PW-9 in his cross-examination testified that they have a medico legal register in their hospital. He also deposed that he has forgotten whether he has written the details after inspection of all the five injured persons in the said medico register or not. He denied the fact that he has stated falsely that he was not able to recall whether he has written the details after inspection of all five injured persons in the said medico legal register or not. He further deposed that in all the medical reports submitted by him i.e. Ext-5 to Ext-9 there was no mention of the case number against which he has medically examined the five injured

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persons. Moreover, he deposed that the nature of injury has not been mentioned in Ext-5 to Ext-9. He denied the fact that the medical reports submitted by him and on presumptions and assumptions. He deposed that in the reports submitted by him, he has not mentioned the local injuries if any sustained by the injured persons. He further deposed that the medical reports submitted by him does not include the name or number of the persons who had escorted the victims and in which case they were medically examined. He also deposed that he could not remember whether the injured persons were appeared before him voluntarily or whether they were brought by police with respect of some case. He denied the fact that the medical reports submitted by him are incomplete.

EVIDENCE OF DEFENCE SIDE

26. Defence plea is total denial while the statement of accused persons were recorded u/s-313 of Cr.P.C. To support the defence one witness i.e. DW-1 Sri Rabindra Kumar Sarkar who stated that on 15.08.2012, he was at Dhekiajuli PS as SI of Police and on that day, the complainant Kitab Ali lodged an ejahar before the O/C of Dhekiajuli PS and accordingly, O/C of Dhekiajuli PS registered a case vide Dhekiajuli PS case No-356/12 under section-341/325/506/34 of IPC. He also deposed that the O/C of Dhekiajuli PS endorsed him to investigate the case. He identified the FIR form as Ext-A and Ext-A(1) is the FIR and Ext-A(2) is the signature of O/C Ananta Das. He further deposed that during the investigation, he visited the place of occurrence and prepared a sketch map. He identified the sketch map as Ext-B wherein he put his signature as Ext-B(1). He also deposed that he had shown the place of occurrence to be the land of the informant named Kitab Ali. He identified the place of occurrence as Ext-C. Moreover, he deposed that after conclusion of the investigation, he had submitted charge sheet against the accused persons, namely, Md. Hasen Ali, Md. Hussain Ali, Md. Hatem Ali, Md. Abed Ali and Md. Roijul @ Baharul Islam.

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He identified the charge sheet submitted by him as Ext-D wherein he put his signature as Ext-D(1).

27. DW-1 in his cross-examination testified that at the time when he investigated the case SI Dharani Dhar Deka was also at Dhekiajuli PS. He further deposed that SI Dharanidhar Deka investigated a case registered against the informant Kitab Ali and others. He deposed that eh he did not know which of the case filed earlier. He also deposed that the place of occurrence was a cultivation land. He denied the fact that the entire incident occurred in front of the house of Md. Hasen Ali. He also denied the fact that he has not investigated the original incident.

DISCUSSION, DECISION AND REASONS FOR SUCH DECISION

28. Before appreciation of evidences on record, I would like to highlight some points of argument put forwarded by the Learned Advocate appearing for the State as well as the learned Advocate appearing for the accused persons. For the sake of brevity, I would like to reproduce certain relevant points of arguments as follows:-

- Learned advocate of the State during time of argument hearing by placing his reliance upon the evidences on record vehemently submitted before this Court that the case of the prosecution is proved beyond any reasonable doubt against the accused persons, as such the accused persons are liable to be convicted on the aforesaid charges framed against them. The prosecution side further argued that the prosecution side by adducing oral as well as documentary forms of evidences safely bring home the charges against the accused persons.
- Per contra, learned defence Advocate **Mr. S.K. Alam**, Senior Advocate, appearing during the time of argument strenuously submitted before this Court that the evidences adduced by the prosecution side are contradictory and no reliance can be placed

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upon their evidences. Learned counsel of defence side specifically pointed out before this Court that serious omissions reveals from the evidences of the prosecution witnesses amounts to contradictions and in support of his argument he relied upon the following rulings:- **(1996) 2 GLR 79,**

- He further argued that almost all the witnesses are the relatives of the victim and as such their evidences cannot be relied upon by placing the judgment referred as **(2010) 4 GLR 445.**
- Learned advocate of the defence side further argued on the point that the prosecution side failed to examine any independent witness and also referred case law as **2013 (3) GLT 125.**
- Learned advocate of the defence side further argued that the statements made before the I/O by the witnesses substantially differs with the statement given in the court and he also referred the following case law:-

- (a) (1995) GLR 421,**
- (b) (2010) 4 GLR 567,**
- (c) (2019) 2 GLR 145**

- Learned advocate of the defence side further argued that the accused persons exercised right of private defence to protect themselves and protect the property and accordingly the defence side relied upon the following judgments:-

- (a) AIR 1975 SC 1674,**
- (b) (2017) 1 GLR NOC 7**

"APPRECIATION OF EVIDENCE ON RECORD"

29. For the convenience of discussion and decision of all the points of determination, I would like to discuss all points together.

30. It is worth mentioning that, the criminal jurisprudence of the country rests on the principle of proving the guilt of the accused beyond all reasonable doubt by the prosecution. There must not be any shadow of doubt on the truthfulness of

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the prosecution case. This being the cardinal principle of criminal jurisprudence, we must scrutinize the evidence produced by the prosecution from all possible corners and must also test the veracity of the witnesses. If the witnesses are found as wholly reliable on the point of guilt of the accused then only the accused can be held as guilty of the alleged crime.

31. In the upcoming discussions this Court shall try to evaluate the evidences on record in the light of each of the points for determinations formulated hereinbefore and for the benefit of proper appreciation of the evidences of record, I would like to throw light upon the prime accusations levelled against the accused persons by the prosecution in this case.
32. On meticulous as well as thoughtful perusal of the entire case in hand, this Court finds that the criminal law sets into motion against all the accused persons of this as soon as an ejahar lodged by the informant named Md. Hatem Ali alleging, inter-alia, that on 15.08.2012 at 9 AM, the accused persons, namely, Md. Amir Ali, Md. Azid, Md. Rahim, Md. Hasmad, Md. Hamid Ali, Md. Kajim Uddin, Md. Kitab Ali, Md. Abdul Barek and Md. Ibrahim due to some previous grudge illegally entered into the house of his brother named Md. Hasen Ali armed with lathis, dao, spade (Kudal), bolom (Spear) etc. and stabbed his brother Md. Hasen Ali with dagger for which his brother sustained grievous injuries. It is also alleged that accused persons, namely, Md. Hussain Ali and Md. Abed Ali also struck his brother Md. Hasen Ali for which his brother sustained cut injuries.
33. On the basis of the contention of the ejahar after having an investigation, charge-sheet was filed against the accused persons, namely, Md. Hasmad Ali, Md. Abdul Hamid, Md. Abdul Azit, Md. Kajimuddin, Md. Abdul Barek, Md. Abdul Rahim and Md. Amir Ali and consequent to that charges u/s-147/148/149/323/324/326 of Indian Penal Code was framed against the above-named accused persons, explained and read over to all the accused persons on which the pleads not guilty and claimed to be tried.

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34. At the outset, I would like to discuss the evidence related to the injuries sustained by the victim named Md. Hasen Ali as per the medical report exhibited vide Ext-3 by PW-8. Undeniably, the Medical Officer who medically examined the victim named Md. Hasen Ali not examined by the prosecution side but the medical report from Dispur Hospital Pvt. Ltd. which duly collected by the Investigating Officer (PW-8) has been exhibited as Ext-3 by the Investigating Officer and the defence side not denied the medical report which has been collected by the Investigating Officer (PW-8) during the time of cross-examination of PW-8. On meticulous perusal of the medical report vide Ext-3; it disclosed that victim Md. Hasen Ali sustained multiple cut injury over the scalp, chest, back, (R) Forearm with raw area scalp with exposed cranium. The injuries are opined as grievous in nature caused by sharp and dangerous weapon.
35. The injuries of victim Md. Hasen Ali as disclosed from Ext-3, indorses and signpost that on the date of incident i.e. on 15.08.2012 the victim was examined at Dispur Hospital Pvt. Ltd. and he was discharged from the hospital on 22.08.2012 and the injuries sustained by him as per the medical report (Ext-3) are grievous in nature caused by sharp and dangerous weapon. The defence side during the cross-examination of the Investigating Officer by whom Ext-3 was exhibited not denied the injury of the victim. The defence side even examined one witness in support of the plea of the accused persons and said witness even failed to disagree with the injury of the victim. The accused persons in their statements recorded under section-313 of Cr.P.C, simply denied the prosecution story claiming to be false but there was no expression from the accused persons that victim Md. Hasen Ali had not sustained any sorts of injury.
36. From the aforesaid discussion, this Court putting its reliance upon the evidences of prosecution side opines that the injury of victim Md. Hasen Ali has not been denied by the defence side and the same stands proved before this Court.

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37. Now in the upcoming discussions, this Court shall try to ascertain the following vital questions:-

(i.) **Whether the injuries sustained by the victim named Md. Hasen Ali on 15.08.2012, actually perpetrated or caused by the accused persons?**

(ii.) **Whether the accused persons are involved in causing the injury of multiple cut injury over the scalp, chest, back, (R) forearm with raw area scalp with exposed cranium belongs to the victim named Md. Hasen Ali?**

38. The facts of the prosecution case as we have understood in the preceding discussions that on the date of incident informant's brother Md. Hasen Ali was at his house and all the accused persons forming unlawful assembly entered into his house, committed rioting with the victim with intend to cause grievous injuries and consequently, physically assaulted the victim Hasen Ali with lathi, dao, spade (Kudal), bolom (spear) etc. and caused him injured by stabbing with sword and the injuries sustained by the injured as disclosed from Ext-3 i.e. medical report. The medical report submitted and exhibited by PW-8 as Ext-3 upholds the fact of sustaining injuries by victim Hasen Ali.

39. To decide the above said disputations, let us peruse the evidence on record presented by all the prosecution witnesses. On meticulous perusal of evidences on record, it disclosed that PW-1 is the informant of this case and he testified before this court that on 15.08.2012 at 9 AM, on hearing hue and cry from the house of his brother Hasen Ali, he went there and saw Amir Ali was cutting banana trees from his brother Hasen Ali's house and when his brother resisted to the said act of the accused, the accused Amir Ali had assaulted his brother Hasen Ali by means of a sword in his hand, head, neck and his back. Thereafter, he shifted his brother to Dhekiajuli PHC and from where he was referred to Tezpur Civil Hospital and Guwahati. The evidence presented by PW-1, informant who lodged ejahar vide Ext-1 appears to be supportive and corroborative with his own version as he contended in his ejahar vide Ext-1. The defence side

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during the cross-examination of the PW-1 failed to dismantle his credence by way of bringing out any sort of contradictions except putting certain suggestions. From the evidence of PW-1, it has become clear that at the time of hue and cry that allegedly occurred at Hasen Ali's house, he (PW-1) went there and saw accused Amir Ali assaulted his brother Hasen Ali by means of sword and that fact remains unshaken which supports the facts of physical assault inflicted upon the victim named Hasen Ali by accused Amir Ali and further the evidence of PW-1 appears to be direct in nature which makes his evidence to be trustworthy.

40. PW-2, Must. Firuja Begum also supported and corroborated the date, time of place of incident by stating that on 15.08.2012 at 9 AM, she heard noise from outside of her house and when she came out she saw accused Amir Ali was cutting banana tree and when Hasen Ali obstructed accused Amir Ali from cutting banana trees, the accused Amir Ali assaulted Hasen Ali by means of digging hoe (Kodal) in his back and head. PW-2 also deposed that accused Abdul Ajish, Abdul Barek, Abdul Hamid and Abdul Rahim accompanied accused Amir Ali. She during her cross-examination supported and corroborated her evidence-in-chief by stating that she saw accused Amir Ali assaulting Hasen Ali near Hasen Ali's house. She has categorically stated in her cross-examination that she had only seen accused Amir Ali had assaulted Hasen Ali. Hence, it is seen that the evidence of PW-2 also appears to be corroborative with the version of PW-1.
41. PW-3 is the victim Md. Hasen Ali and as per his evidence on 15.08.2012 at 9 AM, all the accused persons forcefully entered into his house and started cutting their banana trees and when he resisted to the said acts of the accused persons, accused Amir Ali had assaulted him with a sword on his head. He also testified that accused Hamid pushed him with spear (Bollom) and accused Ajit stabbed him with spade (Kur) on the back side of his neck. He also deposed that accused Amir caused him injured with a sword on his right hand, back and the various parts of his body. The evidence presented by PW-3 who is the victim

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of this case appears to be supportive and corroborative with the version of prosecution story and the defence side during his cross-examination failed to dismantle his credence by way of bringing out any sort of contradictions. PW-4 Md. Hussain Ali heard about the incident and he heard that someone stabbed Hasen and due to that Hasen sustained injuries. PW-5, Md. Abed Ali also appears to be hearsay in nature and as per his evidence he heard commotion in the house of Hasen Ali and at the relevant time he was sleeping at his home. He also deposed that when he went there accused Barek had beaten him with lathi on his head and thereafter, he returned back to his house. Although, he during his evidence-in-chief stated that accused Barek had beaten him with lathi but during his cross-examination he stated that Barek had not caused him injury with lathi on his head.

42. PW-6, Md. Raizul Islam testified before this court that on 15.08.2012 at about 9 AM, occurrence took place at the house of Hasen Ali. He also testified that on the date of incident, the accused persons had entered into the boundary of Hasen Ali to cut banana plants with dao and dagger and when Hasen Ali resisted to the said act, the accused had assaulted Hasen Ali on his hand, head, neck and his back with the weapon likedao, dagger etc. and due to that Hasen Ali became senseless. He also deposed that on hearing hue and cry, he went to the place of occurrence and on seeing him the accused persons fled away. He also testified that as the injuries sustained by Hasen Ali are Grievous in nature and he was immediately referred to Guwahati. PW-6 during his cross-examination also testified that at the time of incident he was sitting in his house and on hearing hue and cry, he immediately went to the place of occurrence and saw the physical assault caused by the accused persons. Hence, it is seen that PW-6 on hearing hue and cry went to the place of occurrence and witnessed the alleged incident and that part of his evidence makes his evidence to be direct and articulate himself to be an eye witness. Per contra, the defence

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side failed to bring out any sort of material contradiction from his cross-examination.

43. PW-7, Must. Afia Begum in her evidence corroborating the date and time of incident stated that hearing hue and cry she went to the house of Hasen Ali and saw the accused persons were cutting down banana trees of Hasen Ali and when Hasen Ali resisted, accused persons physically assaulted Hasen Ali with dao, sword (Tarowal) for which Hasen Ali became senseless and thereafter, Hasen Ali was taken to hospital and from there to Guwahati. PW-7 in her cross-examination had not deposed anything which may raise any suspicion over her evidence-in-chief.
44. PW-8 is the Investigating Officer and as per his evidence on 15.08.2012 while he was working at Dhekiajuli PS as Second Officer, one FIR lodged by Hatem Ali which was received by then O/C Ananta Das, who later registered the same as Dhekiajuli PS Case No-355 of 2012, under sections-147/148/149/447/326 of IPC. Thereafter, the O/C entrusted him with the investigation of the case. He also deposed that thereafter, he went to the place of occurrence, prepared sketch map, recorded the statement of the witnesses and also sent the victims for their medical examination. He also deposed that there were five victims who were sent to 30 bedded Dhekiajuli CHC and also collected the medical reports of the victims. He further deposed on completion of the investigation finding sufficient evidence, he submitted charge-sheet against the accused persons, namely, Amir Ali, Abdul Rahim, Abdul Aziz, Abdul Hamid, Hasmat Ali, Abdul Barek and Kajimuddin, who were shown as an absconder under section-147/148/149/447/323/324/326 of IPC.
45. PW-8 in his cross-examination testified that he has not seen any paper relating to Civil Suit. He also deposed that in his sketch map, the "B" denotes the abandoned land of Kitab Ali and "C" denotes the hours of Kitab Ali and "D" denotes house of Hasen Ali. He further deposed that he has not taken the signature of any witness on the sketch map. He also testified that Ext-3 (Medical

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Report) was collected by him from Dispur Hospital on 09.09.2012 as per his requisition dated-05.09.2012. He admitted the fact that PW-3 Hasen Ali has stated before him that there was a dispute regarding the boundary of land with Kitab Ali since long. PW-8 during his cross-examination also affirmed that PW-3, Hasen Ali has not stated before him that accused Hamid pushed him with a spear (Bollom) on his head and accused Ajit stabbed him with a spade on the back of his neck and further Amir Ali had assaulted him by means of a sword (Torowal) and caused him injuries on his right hand, back and various parts of his body and also sustained a cut injury on his head.

46. PW-9 is the Medical Officer Dr. Koushik Bhuyan Keot and as per his evidence on 15.08.2012, while he was working as Medical Officer under NHM, Dhekiajuli CHC he examined Md. Hasen Ali, Md. Abed Ali, Md. Hatem Ali, Md. Raijul Ali and Must. Afiya Begum and thereafter, on 30.08.2012 he submitted a report for Md. Hussain Ali and Md. Abed Ali. He also deposed that on 23.08.2012 he submitted a report for Md. Raijul Ali, Md. Hatem Ali and Must. Afiya Begum. He deposed that on examination he found as follows:-

- (i) Md. Hasen Ali:- Vitals were normal. Chest, cardio logical and abdomen were found normal. Impression was simple injury caused by sharp weapon.
- (ii) Md. Abed Ali:- Vitals were normal. Chest, cardiological and abdomen were found normal. Impression was simple injury caused by blunt object.
- (iii) Md. Hatem Ali:- Vitals were normal and other systemic examination were found normal. Impression was given simple injury caused by blunt object.
- (iv) Md. Raijul Ali:- Vitals were normal and other systemic examination were found normal. Impression was given simple injury caused by blunt object.

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(v) Must. AfiyaBegum:- Vitals were normal and other systemic examination were found normal. Impression was given simple injury caused by blunt object.

He identified the medical reports as Ext-5, Ext-6, Ext-7, Ext-8 and Ext-9 wherein he put his signatures as Ext-5(1), Ext-6(1), Ext-7(1), Ext-8(1) and Ext-9(1).

47. PW-9 in his cross-examination testified that in all the medical reports submitted by him i.e. Ext-5 to Ext-9 there was no mention of the case number against which he has medically examined the five injured persons. Moreover, he deposed that the nature of injury has not been mentioned in Ext-5 to Ext-9.

48. To sum up the evidences on record, it emphaticallyunveil before this court that the evidences of PW-1 (Informant), PW-2, PW-3 (Victim), PW-6 and PW-7 appears to be **corroborative** and **coherent**to the extent of inflicting physical assault upon the body of the victim by the accused Amir Ali. Now, the question is whether all the accused persons physically assaulted the victim Hasen Ali on the date of alleged incident. The aforesaid question discloses as the witnesses i.e. PW-1, PW-2, PW-3, PW-6 and PW-7 had not categorically deposed against all the accused persons. If we meticulously perused the evidence of PW-1 who is also an eye witness to the alleged occurrence, it disclosed that accused Amir Ali assaulted his brother Hasen Ali (Victim) by using sword. As per PW-2 accusedAmir Ali caused injury upon the body of victim Hasen Ali with a digging hoe (Kudal)and she had seen the occurrence. The victim Md. Hasen Ali (PW-3) supported the involvement of accused Md. Amir Ali, who had assaulted him by using sword. PW-6 and PW-7 utters the word that accused persons assaulted Hasen Ali when Hasen Ali restrained the accused persons from cutting banana trees. The evidences adduced by all the prime witnesses supported and corroborated one fact that accused Md. Amir Ali physically assaulted the victim Hasen Ali by using sword. Although, PW-2 has deposed that accused Amir Ali was using "Kudal"at the time of physically assaulting the victim Hasen Ali.

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49. Now, in respect of involvement of other accused persons, the victim also failed to utter the names of other accused persons in his deposition and as such, this court finds that the fact of physical assault upon the victim Md. Hasen Ali by the accused Md. Amir Ali supported and corroborated by the witnesses and in respect of active participation of physical assault upon the victim, the victim himself utters the names of only two persons and remaining witnesses did not utter the names of other accused in inflicting physical assault upon the body of victim Md. Hasen Ali.
50. Considering that aspect, this court cannot opine that the other accused persons leaving apart the accused Md. Amir Ali has actually inflicted any sort of physical assault upon the body of victim Md. Hasen Ali even though, the victim has deposed about the accused Hamid and Ajit. The fact deposed before the court by the victim in respect of involvement of accused Md. Abdul Hamid and Ajit not appears to be supportive and corroborative from the evidence of other witnesses. As such, this court is not in a position to rely upon the contentions of the prosecution that all the accused persons forming unlawful assembly committed rioting with the victim and caused physical injuries upon the victim. One fact appears to be stands proved in respect of causing physical assault upon the body of the victim Md. Hasen Ali by the accused named Md. Amir Ali as the witnesses supported and corroborated such fact including the victim.
51. Now, question is whether one part of the evidence which appears to be truthful from the declaration of the victim named Md. Hasen Ali and another part which not appears to be supportive from the other source of witnesses may be brushed aside. The fact which appears to be stands proved and supportive and corroborative cannot be brushed aside leaving apart the fact which has not been proved before the court because the maxim '**Falsus in uno, falsus in omnibus**' has no application in India. The witnesses cannot be branded as liars merely because some of his version not appears to be supportive and proved before this court.

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52. Henceforward, to sum up the evidences of all the above said witnesses it becomes crystal clear that some of the witnesses have deposed that all the accused persons were involved in the alleged incident without citing their specific names and victim and one witness utters the name of some of accused persons out of seven numbers of accused. The discrepancies let slips from the evidences on record regarding the names of the actual accused persons in respect of the fact of causing injuries to the victim named Md. Hasen Ali fails to make their evidences contradictory in nature as the witnesses corroborated one fact that accused Md. Amir Ali caused injuries to the victim Md. Hasen Ali with sword and that part of their evidences cannot be overlooked and further same cannot be thrown away and brushed aside. The defence side failed to dismantle their credence during the time of their cross-examination and for the sake of brevity of the judgment; I would like not to reproduce the entire cross-examination part of all the witnesses as their cross-examination part by this time tailored by this Court.

53. Therefore, in the light of the above said discussion from the corroborative piece of evidences adduced by almost all the witnesses overthrew against accused Md. Amir Ali and those implicating part cannot be overlooked and discarded. As such, upon the above said discussion and considering the corroborative piece of evidences presented against accused Md. Amir Ali, this Court finds that accused Md. Amir Ali may solely liable to be prosecuted for his acts like causing injuries upon the body of the victim Md. Hasen Ali using the weapons of sword.

"CREDIBILITY OF RELATIVE WITNESSES OR INTERESTED WITNESSES"

54. Learned Senior Counsel Mr. S.K Alam of the defence side during the time argument strenuously submitted before this Court that all the witnesses are appears to be relatives of the victim and as such their evidences cannot be relied upon wholly. Learned advocate for the defence relied upon the ratio of our parent Hon'ble Gauhati High Court by referring a judgment styled as "**Kanti Ray Barman and other's Vs. State of Tripura, (2010) 4 GLR 445,**" where

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it has been decided that testimony of father, mother, brother and other close relatives of the victim cannot always be treated credible as they highly interested parties”.

55. I have given my thoughtful consideration upon the judgment of our parent Hon'ble High Court and perused the entire case in the light of factual aspect of this case and it finds that the judgment of **Kanti Ray Barman and other's Vs. State of Tripura, (2010) 4 GLR 445**, was pronounced in separate circumstances where the offences of section-306/498A of IPC was in question and further factual aspect of that judgment is quite different from this case in hand. Hence, the ratio of that case is not applicable to this case.
56. Now coming to the factual aspect of this case, this court finds that PW-1 is the informant, who is the brother of the victim, PW-2 Must. Firuja Begum is an independent witness, PW-3 is the victim Md. Hasen Ali, PW-6 is the son of the victim Md. Hasen Ali and PW-7 Must. Afiya Begum is the daughter-in-law of the victim. Hence, it is seen that PW-1, PW-3, PW-6 and PW-7 are appears to be the relatives of the victim. PW-2 is one independent witness. PW-2 being an independent witness of this case supported the fact of causing injuries by the accused Md. Amir Ali to the body of victim. PW-2 further appears to be an eye witness to the alleged incident.
57. I have given my solicitous reflection about certain settled laws over the dispute in hand. There is no hard-and-fast rule that family members can never be true witnesses to the occurrence and they will always depose falsely before the court on the ground of their relation. It will always depend upon the facts and circumstances of a given case. In "**Jayabalan vs. UT of Pondicherry(2010) 1 SCC 199**,"the Hon'ble Apex Court observed that "the evidence cannot be ignored or thrown out solely because it comes from a person closely related to the victim."
58. Similar view was taken by the Hon'ble Apex Court in **Ram Bharosey vs. State of U.P. AIR 1954 SC 704**, where the Hon'ble Apex Court stated the dictum of

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law that a close relative of the deceased does not, per se, become an interested witness. An interested witness is one who is interested in securing the conviction of a person out of vengeance or enmity or due to disputes and deposes before the court only with that intention and not to further the cause of justice. The law relating to appreciation of evidence of an interested witness is well settled, according to which, the version of an interested witness cannot be thrown overboard, but has to be examined carefully before accepting the same. Similar view was taken by the Hon'ble Apex Court in the cases of "**Mano Dutt & Anr. vs. State of UP [(2012 (3) SCALE 219)] and Satbir Singh & Ors. vs. State of Uttar Pradesh [(2009) 13 SCC 790]."**

59. In State of **Himachal Pradesh vs. Mast Ram; (2004) 8 SCC 660**, the Hon'ble Apex Court observed as under:-

"The law on the point is well settled that the testimony of the relative witnesses cannot be disbelieved on the ground of relationship. The only main requirement is to examine their testimony with caution. Their testimony was thrown out at the threshold on the ground of animosity and relationship. This is not a requirement of law (**Dharam Pal vs. State of U.P.; 2008 (1) ALJ 721**)."

60. As such from the ratio and decisions of the Hon'ble Apex Court it is crystal clear that testimonies of the relative witnesses cannot be disbelieved on the ground of their relationship. On meticulous perusal of the evidences of the prosecution, it unveiled before this court that PW-1, PW-2, PW-6 and PW-7 are the eye witnesses to the alleged incident and PW-2 appears to be an independent witness. Leaving apart the evidence of PW-2, this court finds that PW-1, PW-3, PW-6 and PW-7 are the relatives of the victim and the victim himself. Now question is whether the credence of all interested witnesses would be disbelieved by the dint of their relationship with the victim. The answer will be definitely a big "NO" as credibility of an eye-witness not to be judged merely on the basis of his relationship with the victim and strained relation with the accused.

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61. Hon'ble Apex Court in **(State of U.P. vs. Atul Singh etc. etc.; 2009(4) Supreme 332)** decided firmly that—

“Merely because the eye-witnesses are family members their evidence cannot per se be discarded. When there is an allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. The court shall also deal with the contention regarding interestedness of the witnesses for furthering the prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.”

62. Hon'ble Apex Court in **(Kapildeo Mandal &Ors. Vs. State of Bihar; AIR 2008 SC 533)**— observed that

“The credibility of a witness cannot be judged merely on the basis of his close relation with the deceased and as such cannot be a ground to discard his testimony, if it otherwise inspires confidence and, particularly so, when it is corroborated by the evidence of independent and injured witnesses.”

63. In **(ShyamBabu vs. State of U. P.; AIR 2012 SC 3311)** decided that ---

“testimony Related eye-witness not to be discarded merely on account of relationship Where the presence of the eyewitnesses is proved to be natural and their statements are nothing but truthful disclosure of actual facts leading to the occurrence, it will not be permissible for the Court to discard the statement of such related or friendly witnesses. There is no bar in law on examining family members or any other person as witnesses. In fact, in cases involving family members of both sides, it is a member of the family or a friend who comes to rescue the injured. If the statement of witnesses, who are relatives or known to the parties affected is credible, reliable, trustworthy and corroborated by other witnesses, there would hardly be any reason for the Court to reject such evidence merely on the ground that the witness

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was a family member or an interested witness or a person known to the affected party or friend etc.”

64. Now coming to the present case in hand we have already discussed in the foregoing discussions that although the witnesses i.e. PW-1, PW-3, PW-6 and PW-7 are appears to be the close relatives but the witnesses are being the eye witnesses supported and corroborated the version of the victim (PW-3), to the effect that on the date of incident accused Md. Amir Ali stabbed the victim Md. Hasen Ali with a sword for which he had sustained injuries. The medical evidence further corroborated such fact of sustaining injuries by the victim. In presence of corroborative piece of evidences presented before this court, the evidences of relatives of victims cannot be brushed aside rather it is the duty of the court to put reliance upon their evidences.

“ARGUMENT OF DEFENCE SIDE IN RESPECT OF EVIDENCE OF HIGHLY INTERESTED WITNESSES”

65. Learned Senior Counsel appearing for the accused persons, during the time of argument further submitted that the witnesses are highly interested. On the point of the argument of Learned Counsel, I would like refer some landmark judgment of Hon'ble Supreme Court. Hon'ble Supreme Court in **State of Rajasthan vs. Smt. Kalki and another [(1981) 2 SCC 752]: (AIR 1981 SC 1390), Myladimmal Surendran and others vs. State of Kerala [(2010) 11 SC 129]: (AIR 2010 SC 3281: 2010 AIR SCW 5248) and Samsuddin Sheikh vs., State of Gujarat and another [(2011) 10 SCC 158] : (AIR 2012 SC 37 : 2011 AIR SCW 6486)**, firmly decided that--- an interested witness must have some direct interest in having the accused somehow convicted for some extraneous reason and a near relative of the victim is not necessarily an interested witness. **(Amit vs. State of Uttar Pradesh; AIR 2012 SC 1433).**

66. Hence, settled law is that a witness must be considered to be a highly interested witness if said witness has some direct interest in having the accused somehow convicted for the some extraneous reason. In this case, the defence side failed

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to collect any materials contradiction from the cross-examination of the witnesses that may substantiated that PW-1, PW-3, PW-6 and PW-7 have some direct interest in having the accused persons somehow convicted for some extraneous reason. Only during the cross-examination of the witnesses, the defence side tried to materialize his defence putting certain suggestions and extracting the fact of filing a cross case by the accused side against the victim and the others. The defence side further brought on record that there was a land dispute between the accused and the informant. The defence side failed to extract any sort of materials from the cross-examination of the aforesaid witnesses upon which this court may presume that the victim and others have any motive of having the accused persons convicted from the court. The fact of land dispute pending between the parties and pendency of a criminal case does not create any adverse interest for the victim and the independent witness upon which they may be considered to the highly interested witness of securing conviction of the accused persons from the court. PW-2 being an independent witness also categorically supported and corroborated the version of the prosecution and no adverse interest has been established from the evidence of independent witness and other witnesses. Therefore, in the light of above said discussions, this court is constrained to opine that argument presented by the defence side deserves to be discarded without having any iota of merit.

67. Upon the above said discussions and settled provisions of law, this Court finds the evidences of the above said witnesses wholly reliable and their evidences cannot be discarded merely considering the fact that witnesses are the relatives of victim named Md. Hasen Ali.

"CONTRADICTIONS AND OMISSIONS PART"

68. Learned advocate appearing for the defence side during the time of argument vehemently submitted before this Court by quoting the cross-examination of PW-8, who is the Investigating Officer of this case that the witnesses are appears to be contradictory with their previous statements recorded u/s-161 of

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Cr.P.C and as such their evidences cannot be relied upon in view of Section-145 of Indian Evidence Act.

- Now, a pertinent question stands up before this Court "whether the facts disclosed from the cross-examination part of the witnesses those confirmed by PW-8 (Investigating Officer) makes their evidences doubtful and untrustworthy in nature? Learned advocate appearing on behalf of the defence side referred to the following judgments of our parent High Court **:- (i) (1995) 1 GLR 421, (ii) (2010) 4 GLR 567 and (iii) (2019) 2 GLR 145** in support of his argument.
- I have given my thoughtful consideration over the judgment referred by the defence side and it finds that he rightly referred the judgment of our Hon'ble Parent High Court in support of his argument and admittedly, material omissions and contradictions makes the witnesses full with shortcomings and doubtful.
- To decide the contradictions and omissions part of the witnesses of the prosecution case, let us reproduce the cross-examination part of I.O i.e. PW-8 where he confirmed that:-
 - ❖ Victim Md. Hasen Ali (PW-3) has not stated before him that accused Hamid pushed him with spear (Bollom) on his head and accused Ajit stabbed him with spade on the back side of his neck and further Amir Ali had assaulted him by means of a sword (Torowal) and caused injuries on his right hand, back and various parts of his body and also sustained cut injury on his head.
 - ❖ Witness Afiya Begum has not stated before him that the accused persons had cut the banana trees of Hasen Ali which was located near the kitchen of Hasen Ali but she

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has stated before him that the accused had cut the banana trees of Hasen Ali which was located in front of his house.

69. As such, we have seen that PW-3 and PW-7, in their statement before the I.O have not stated certain facts. In the light of the above said statements in the forthcoming discussions, this court shall try to ascertain---

"Whether those are material omissions or contradictions on the part of their evidences under which their evidences may be disbelieved or discarded."

70. Undoubtedly, the judgment referred by the Learned Counsel of the Defence side makes it crystal clear that material omissions and contradictions revealed from the previous statements of witnesses makes their evidences doubtful and untrustworthy in nature. Before framing any opinion let us have a discussion, as to whether the statements not stated by the witnesses before the I.O in their 161 Cr.P.C, statements amount to material omissions and contradictions. And to understand such, facts let us have a look at the actual procedure for impeaching the credibility of the witnesses during cross-examination?

71. In the approaching discussions, we will try to find out as to whether the defence side adopted the right procedure to dismantle the credence of the witnesses by way of bringing out material omissions or contradictions with their previous statements.

72. Hon'ble Apex Court has narrated the procedure of bringing on record contradictions and omissions in simple words in the recent verdict of **V. K. Mishra and another Vs. State of Uttarakhand and another (AIR 2015 S.C. 3043)**. In Para-18 of the said citation it reads as under:- "Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it

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becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is to be drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter, when investigating officer is examined in the court, his attention should be drawn **to the passage marked** for the purpose of contradiction; it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves **referring to the police statement and culling out that part** with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo moto make use of statements to police not proved in compliance with Section-145 of Evidence Act that is, by drawing attention to the parts intended for contradiction?" More or less, the same procedure is laid down by the Hon'ble Bombay High Court long back in the year 1958, in the case of **Sayyad Hussain Sayyad Hussain Vs. The State, AIR 1958 Bom 225.**

73. If it is intended by an accused to contradict the evidence given by a prosecution witnesses at the trial with a statement made by him before the police during the investigation, the correct thing to do is to draw the attention of the witness to that part of the contradictory statement, which he made before the police and question him whether he did in fact make that statement. If the witness does not admit having made the particular statement to the police, that admission

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will go into evidence and will be recorded as part of his evidence. If the witness does not admit having made the particular statement to the police, such a statement before the police i.e. the particular portion of the statement recorded u/s-161 of Cr.P.C should be **provisionally marked for identification** and when the Investigating Officer who had actually recorded the statement in question comes into the witness box he should be questioned as to whether that **particular statement had been made to him during the investigation by the particular witness**, and obviously after refreshing his memory from the police case diary the Investigating Officer would make his answer in the affirmative. The answer of the Investigating Officer would prove the statement which is then **exhibited** in the case and will go into evidence and may, thereafter, be relied on by the accused as a contradiction.

74. Our Parent Hon'ble Gauhati High court, retreated the same principles **Abdul Hai and Ors. vs State Of Assam on 6 May, 2006, Equivalent citations: (2007) 1 GLR 275** and where it has been decided in para no-13, --- the witness denies having made such a statement before the police, the particular portion of the statement recorded under Section-162 of Criminal Procedure Code should be provisionally marked for identification, and when the investigating officer who had actually recorded the statement in question comes into the witness box he should be questioned as to whether that particular statement had been made to him during the investigation, by the particular witness, and obviously after refreshing his memory from the Police Case Diary the investigating officer would make his answer in the affirmative. The answer of the investigating officer would prove the statement which is **then exhibited** in the case and will go into evidence, and may, thereafter, be relied on by the accused as a contradiction. This is the only correct procedure to be followed, which would be in conformity with Section-145 of the Evidence Act.
75. Hon'ble Calcutta High Court (Appellate Side) **Anjan Ganguly & Ors. - vs State Of West Bengal - on 12 March, 2013**, decided that ----

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- A witness may have stated in statement under Section 161 of Cr.P.C. that 'X murdered Y'. In Court witness state 'Z murdered Y'. This is a contradiction. Defence counsel or Court and even prosecution if witness is declared hostile having resiled from previous statement, is to be confronted to bring contradiction on record. Attention of the witness must be drawn to the previous statement or statement under Section 161 Cr.P.C. where it was stated that 'X murdered Y'. Since Section 145 of the Indian Evidence Act uses the word being proved, therefore, in the course of examination of the witness, previous statement or statement under Section-161 of Cr.P.C. will not be exhibited but shall be assigned mark, and the portion contradicted will be specified. The Trial Court in the event of contradiction has to record as under.
- Attention of the witness has been **drawn to portion A to A of statement marked as 1**, and confronted with the portion where it is recorded that 'X murdered Y'. In this manner by way of confrontation contradiction is brought on record. Later, when Investigating Officer is examined, prosecution or defence may prove statement, after Investigating Officer testifies that statement assigned mark was correctly recorded by him at that stage statement **will be exhibited** by the Court. Then contradiction will be proved by the Investigating Officer by stating that witness had informed or told him that 'X murdered Y' and he had correctly recorded this fact.
- Now a reference to the explanation to Section-162 of Cr.P.C. which says that an omission to state a fact or

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circumstance may amount to contradiction. Say for instance if a witness omit to state in Court that 'X murdered Y', what he had stated in a statement under Section-161 of Cr.P.C. will be material contradiction, for Public Prosecutor, as witness has resiled from previous statement, or if 'W' has been sent for trial for charge of murder, omission to state 'X murdered Y' will be a material omission, and amount to contradiction so far defence of 'W' is concerned. At that stage also **attention of the witness will be drawn to significant portion** of the statement recorded under Section 161 Cr.P.C. which witness had omitted to state and note shall be given that attention of the witness was drawn to **portion A to A** wherein it is recorded that 'X murdered Y'. In this way omission is brought on record. Rest of the procedure stated earlier qua confrontation shall be followed to prove the statement of the witness and the fact stated by the witness. Therefore, to prove the statement for the purpose of contradiction it is necessary that the contradiction or omission must be brought to the notice of the witness. His or her attention must be drawn to the portion of the previous statement."

76. Hence, from the discussions, above common understanding is that in the course of examination of the witness, previous statement or statement under Section-161 of Cr.P.C. will not be exhibited but shall be assigned mark, and the portion contradicted will be specified. Attention of the witness has to be drawn up and in this manner by way of confrontation contradiction is brought on record. Later, when Investigating Officer is examined, prosecution or defence may prove statement, after Investigating Officer testify that statement assigned mark was

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correctly recorded by him at that stage statement **will be exhibited** by the Court. Emphasised given in Para 29 of Chapter VI of the Criminal Manual describes the manner of Proof and statements, under Section 161, of the Code of Criminal Procedure, 1973.

77. Arriving again to the instant case, this court finds that during the time of cross-examination although the contradictory parts as described above drawn attention to the notice of PW-3, Md. Hasen Ali and PW-7, Must. Afiya Begum by the defence side, but, the exact statement made by them before the I.O (PW-8) not adhered into and not exhibited. As such before the contradictions are to be proved by the Investigating Officer the contradictions must have been brought to the notice of the witnesses by confronting and after exhibiting those statements. Since this procedure was not followed by the defence counsel, those facts as deposed by the above said witnesses before this court and admittedly not stated before the I.O, does not make the entire case of prosecution weaker.
78. Therefore, in the light of all the aforesaid discussion, this court finds that the defence counsel failed to follow the procedure of confrontation of previous statement of the witnesses during the time of cross-examination of PW-3 and PW-7. Hence, upon the above said discussions, this court finds that defence side failed bring out those contradictions complying settled provisions of law and those contradictions cannot be considered as material contradictions or omissions on their part. Accordingly, the argument put forwarded by the defence side is stand discarded.

"EXAGGERATION, DISCREPANCIES AND TRUTHFULNESS OF WITNESSES"

79. Undeniably, the independent witness i.e. PW-2 in her evidence testified that accused Md. Amir Ali assaulted Md. Hasen Ali by means of digging hoe (Kodal). PW-3 the victim Md. Hasen Ali deposed before the court that accused Md. Amir Ali had assaulted him with a sword on his head. PW-6 testified before the court that accused assaulted Hasen Ali with dagger, dao etc. PW-7 testified that the

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accused persons had physically assaulted Hasen Ali with dao, sword etc. when Hasen Ali attempted to restrain the accused from cutting banana trees. PW-1 being the informant and the eye witness to the alleged incident testified that accused Amir Ali had assaulted his brother Hasen Ali by means of a sword in his hand, head, neck and his back. All the witnesses in their evidences have corroborated one fact that the entire occurrence occurred when victim Hasen Ali went forward to prevent the accused from cutting banana trees but PW-2 being an independent witness testified that the accused Md. Amir Ali assaulted the victim with "Kudal" and the other witnesses have deposed that accused persons assaulted Hasen Ali with dagger, dao, spade etc. In presence of the medical report that discloses certain injuries which only may cause by using sharp weapon the evidence of PW-2 where she claimed that accused was assaulted by spade (Kudal) failed to make any difference in the prosecution case as all other remaining facts appears to be corroborative and truthful. Every person has a different prospective of witnessing an incident and most probably when PW-2 went to the place of occurrence she had seen inflicting injuries by using "Kudal" as the other witnesses have corroborated the fact that the accused uses kudal (spade), dao, dagger etc. in causing injuries upon the body of victim Md. Hasen Ali. Therefore, the evidence of PW-2 is appears to be **exaggerating** with the evidence of other witnesses and that part of her evidence appears to be full with minor discrepancies and can be overlooked.

80. In **Appabhai vs. State of Gujrat AIR 1988 S.C. 694 [1988 Cri.L.J.848]**, the **Hon'ble Apex Court** has observed as under:-

"The Court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The Court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of

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certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses now a days go on adding embellishment to their version perhaps for the fear of their testimony being rejected by the Court. The Courts, however, should not disbelieve the evidence of such witness's altogether if they are otherwise trustworthy."

81. Hon'ble Apex Court in State of Rajasthan Vs. Smt. Kalki (AIR 1981 SC 1390), observed that---

"normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence and those are always there, however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects are highlighted recently in **Sucha Singh vs. State of Punjab (AIR 2003 SC 3617)**.

82. It is further decided in State of U.P. Vs. Nagesh (2011 Cr.L.J. 2162 (SC) that-----

"Unless discrepancies, contradictions and inconsistencies affect the core of the prosecution case, they cannot be basis to reject their evidence. Normal discrepancies are bound to occur in the depositions of witnesses due to errors of observations, errors of memory due to mental disposition at the time of the occurrence."

83. In the backdrop of aforesaid laws, the court finds that almost all the material witnesses, in their evidences affirmed that on the date of incident accused Md. Amir Ali stabbed the victim Hasen Ali using sword and caused injuries on his hand, head etc. In presence of those corroborative piece of evidences, the evidence of PW-2, where she claimed that only spade was used in causing injuries to the victim falls within the category of minor discrepancies and exaggerations and accordingly, the same can be overlooked and such fact failed to make the evidences of victim and other witnesses doubtful and untrustworthy in nature.

"DISCUSSIONS OF EVIDENCES OF DEFENCE SIDE"

84. Learned Senior Counsel appearing on behalf of the defence side during the time of his argument strenuously argued before this court that the place of occurrence is an open field and as per the evidences of the witnesses the incident took place at the house of Hasen Ali (Victim). The defence side further argued that to prove the fact of place of occurrence, the defence examined one witness named Sri Rabindra Kumar Sarkar as DW-1, and as per his evidence the place of occurrence is the land of the informant Md. Kitab Ali of Dhekiajuli PS Case No-356 of 2012 under section-341/325/506/34 of IPC and if so, then the entire prosecution story appears to be doubtful.
85. It is true and settled propositions of law that the defence witness deserves same footing as prosecution witness in the light of judgment referred **(2010) 3 SCC (Cri.)330.**
86. I have meticulously perused the evidences on record and it finds that as per PW-1 the incident took place at the house of Hasen Ali and during his cross-examination he testified that accused person's land is situated adjacent to his brother Hasen Ali's house and said land of accused persons is an agricultural land and the banana trees which were cut on the date of incident located on the northern boundary of the land between the accused person and his brother. Hence, it is seen that as per PW-1 the banana trees situated on the northern boundary of the land between the accused persons and his brother. PW-2 in her cross-examination deposed that the incident took place in an open field. PW-3 testified in his cross-examination that father of accused persons Kitab Ali got decree of the disputed land between them and the court officials had handed over the land to him in view of execution order of the Court. He also deposed that there was a road located on the eastern side of the land of the informant. He also deposed that the house of Kitab Ali located on the northern side and his house is located on the southern side and there was a case for the land which situated between his house and the house of Kitab Ali. From the

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cross-examination part of the victim, it seen that there was a land dispute between the victim and the accused persons and the place of occurrence where the incident occurred is situated in the boundary parted by the houses of Kitab Ali and the victim Hasen Ali.

87. PW-6 in his evidence testified that on the date of alleged incident the accused persons entered into the boundary of victim Hasen Ali to cut banana plants with dao and dagger and when Hasen Ali resisted the accused persons assaulted Hasen Ali on his hand, head, neck and his back by the weapon like dao, dagger etc. and due to that Hasen Ali became senseless. So, it is crystal clear from the evidence of PW-6 that the incident occurred in the boundary of land belongs to Md. Hasen Ali and the accused. PW-6 in his cross-examination clarified that the occurrence took place in the northern side of his house as the banana plants situated there. As per PW-7, there was a vacant land in front of the house of Hasen Ali and the house of Kitab Ali situated after the said vacant land. She also deposed that there were banana trees situated in front of the kitchen of Hasen Ali and the said banana trees cut down by accused Amir Ali. As per testimony of PW-8 he has prepared sketch map during the time of investigation and as per the sketch map vide Ext-2 the place marking "A" is the place of occurrence which surrounded by the land of Kitab Ali and the houses of Hasen Ali and Hussain Ali. As per the sketch map the place of occurrence is an open place situated nearby the land of Kitab Ali and the house of Hasen Ali and the evidences presented the witnesses of the prosecution side in respect of place of occurrence appears to be fully corroborative with the version of the investigating officer (PW-8) and the contents of Ext-2 i.e. sketch map.

88. Now, coming to the evidence presented by one investigating officer Sri Rabindra Kumar Sarkar who examined as DW-1, who deposed before this court that on 15.08.2012, there was an ejahar lodged by one Kitab Ali, which was registered vide Dhekiajuli PS Case No-356 of 2012 under section-341/325/506/34 of IPC. Ext-A is the certified copy of the ejahar. He further deposed that during the

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investigation, he visited the place of occurrence and prepared a sketch map. Ext-B is the sketch map and he identified the place of occurrence to be Ext-C and on conclusion of the investigation, he has submitted charge-sheet against the accused persons, namely, Md. Hasen Ali, Md. Hussain Ali, Md. Hatem Ali, Md. Abed Ali and Md. Raijul @ Baharul Islam. Here, DW-1 deposed about a separate case which has been lodged by the father of the accused persons, named Late Kitab Ali against the victim side and said case was lodged on 15.08.2012 and the said incident occurred as per the sketch map in the cultivable land of Kitab Ali.

89. Now, whether both the cases have occurred at the same place it has not been cleared by the defence side. Nowhere, from the evidences on record it disclosed that both the incident of Dhekiajuli P.S Case No-356 of 2012 and the instant case in hand occurred at the same place and time. In absence of any specific proof it cannot be ascertained that both the incident occurred at same time and same place of occurrence.
90. Undoubtedly, on meticulous perusal of the evidences on record, this court finds that there was a continuing land dispute between the victim and the father of accused named Kitab Ali and there was a execution case whereby the decree of land was handed over to Kitab Ali and the incident which we are discussing about in this case in hand admittedly took place between the boundary parted by the land of the victim Hasen Ali and Kitab Ali at the banana plants. The witnesses were found to be deposing that the incident occurred at the house of the victim Hasen Ali and by the house of Hasen Ali, they tried to mean for is the boundary of Hasen Ali that situated in the northern side of the house of Hasen Ali and adjacent to that part of land of Kitab Ali situated. The cross-examination part of all the witnesses clarified such fact.
91. Therefore, in the light of the aforesaid discussion that the evidence adduced by DW-1 failed to make any difference in the case of the prosecution in respect of

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the place of occurrence and accordingly, this court does not find any material contradiction from the evidences on record regarding the place of occurrence.

"SOLE TESTIMONY OF VICTIM MD. HASEN ALI (PW-3)"

92. Learned Senior Advocate appearing for the defence during the time of argument, argued a vital point by strenuously submitting before this court that on the basis of the sole version of PW-3 (victim) the accused persons cannot be held as guilty of commissions of alleged offences? Considering the submissions of the defence side, I would like to endorse my judicious consideration on that aspect. Even though in the abovementioned discussions, it was discussed that the witnesses excluding the victim corroborated and supported the entire case of prosecution, question raised by defence side over sole testimony of the victim and its admissibility required to be adjudicated. In the upcoming discussions, this court shall try put its best endeavour to decide a pertinent question designed as **"Whether on the basis of sole testimony of the victim the accused persons may hold guilty of commissions of alleged offences?"**
93. Leaving apart the testimonies all other witnesses as discussed in the forgoing discussions, this court finds that the evidence of victim (PW-3) Md. Hasen Ali corroborative, coherent and supportive about the fact that accused Md. Amir Ali, assaulted the victim Hasen Ali using sword and due to that victim sustained injuries as disclosed from Ext-3 (Medical Report). PW-1, PW-2, PW-6 and PW-7, also supported and corroborated such facts.
94. Now the question is whether on the basis of sole testimony of the victim or sole testimony of the eye witnesses or all together the accused may be held guilty of commission of the alleged offences. In this case aspect I would like refer a judgment of Hon'ble Apex Court, which is relevant to that point.
95. Hon'ble **Supreme Court of India in Anil Phukan vs. State of Assam on 17 March, 1993 (1993 AIR 1462)** held as follows:--

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"Conviction can be based on the testimony of a single eyewitness and there is no rule of law or evidence which says to the contrary provided the sole eye witness passes the test of reliability. So long as the single eyewitness is a wholly reliable witness the courts have no difficulty in basing conviction on his testimony alone. However, where the single eye witness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the courts generally insist upon some independent corroboration of his testimony."

96. In **Sunil Kumar Vs. State of Govt. of NCT of Delhi (2003 (11) SCC 367)** the Hon'ble Apex Court has held that, "**9. Vadivelu Thevar Case (AIR 1957 SC 614)** was referred to with approval in the case of **Jagdish Prasad vs. State of M.P. (AIR 1994 SC 1251)** ---

"as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Indian Evidence Act, 1872 (in short —the Evidence Act). But, if there are doubts about the testimony the courts will insist on corroboration. It is for the court to act upon the testimony of witnesses. It is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. On this principle stands the edifice of Section 134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise."

97. The Hon'ble Apex Court in "**Jarnail Singh Vs. State of Punjab reported in 2009 (1) Supreme 224**" has held that,

"It is no doubt true that conviction could be based on the sole testimony of a solitary eyewitness but in order to be the basis of conviction his presence at the place of occurrence has to be natural and his testimony should be strong and reliable and free from any blemish. 32. In **Chuhar Singh V. State of Haryana (1976 (1) SCC 879)** Hon'ble Apex Court held that what is important is not how many witnesses have been examined but what is the nature and quality of evidence on which it relies. The evidence of a single witness may sustain a sentence of death whereas a host of vulnerable witnesses

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may fail to support a simple charge of hurt. Since the case must stand or fall by the evidence of single witness, it is necessary to examine that evidence critically."

98. So, from the ratio given by the Hon'ble Apex Court it categorically affirmed that the sole testimony of one witness can be the basis of conviction of an accused person, when such evidence of a single witness is **clear, cogent** and **consistent** and there is no other infirmity and further there is absolutely no impediment in placing reliance on such evidence. In the instant case the victim Md. Hasen Ali (PW-3) is a wholly reliable witness and conviction can be based mainly on the basis of his evidence as he is the best witness being the injured of the crime. The court has not seen any reasons to disbelieve his evidence as defence has failed to demolish the evidence adduced by prosecution.

"RIGHT OF PRIVATE DEFENCE ON PERSON AND PROPERTY"

99. The Learned Advocate appearing on behalf of the defence side during the time of argument vehemently submitted that the place of occurrence is the land belongs to the accused persons and on the date of alleged incident the victim and others entered the land and to protect the property and person, the accused side exercised its right of private defence of body and property and as such they are entitled to get the benefit of right of private defence. The Learned Advocate further referred the following case laws in support of his argument:-(i) **AIR 1975 SC 1674; (ii) (2017) 1 GLR NOC 7.**

100. In the light of argument presented before this court by the defence side, the court has given its thoughtful consideration over the judgment referred and the settled propositions of law. It is settled proposition of law that right of private defence of property and right of private defence of person can co-exist where the accused persons were in possession of the disputed land. Further they were defending their possession against the trespasser.

101. Now, coming to the present case in hand, this court finds that during the entire trial the accused persons failed to put forward any right of private as claimed by the Ld. Defence counsel during the time of argument. Even the

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accused persons in their statement recorded u/s-313 of Cr.P.C by the court failed present any plea which may point out that the accused persons have exercised the right of private defence in protecting the property and the persons. The defence side during the cross-examination also failed to give any suggestions on the effect of right of private defence which has newly been introduced during the time of argument. The settled propositions of law says that whenever the plea of right of private defence which forwarded by the accused persons the burden lies upon the accused persons to establish the circumstances of exercising right of private defence before the court and such prove of right of private defence shall give them benefit of general exception of the criminal law failing of which no adverse presumption can be drawn by the court because the primary burden lies upon the prosecution to prove the corpus delict of the alleged offences (**K. M. Nanavati vs. State of Maharashtra**). In this case there is no iota of the evidence disclose from the evidences on record that the accused persons were in possession of the disputed land and the accused persons exercised the right of private defence in protecting the property and person. Hence, no question arises to adjudicate the fact raised by the defence counsel during the time of argument on the point of right of private defence. Accordingly, same is stand discarded.

"FINDINGS OF THE COURT"

102. In the result, this court from the credible and cogent piece of evidences presented by all the witnesses including the victim Md. Hasen Ali, it is seen that all most all the material witnesses deposed against the accused named Md. Amir Ali. Leaving apart the minor discrepancies about the names of other accused persons as deposed by the victim and other witnesses, this court finds clear and cogent evidence against the accused Amir Ali, who stabbed the victim Hasen Ali with sharp object of sword and causes the following injuries like multiple cut injury, scalp, chest back, (R) forearm with raw area scalp with exposed cranium. The other witnesses including the victim failed to clear the active participation of

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the remaining accused persons by citing their names, although the victim has deposed about the names of two accused persons including the accused Amir Ali, but some of the witnesses deposed against all the accused without citing their names and some witnesses utter names of some of the accused. Hence, leaving a part of involvement of other accused persons with the crime this court finds active involvement of the accused Amir Ali in respect of causing injuries upon the body of the victim named Md. Hasen Ali and that has been supported by the medical evidence. Hence, this court finds the accused Md. Amir Ali guilty of commission of offences.

103. Now in the forthcoming discussions, this court shall try to ascertain as to what acts committed by the accused Amir Ali upon which he may be held guilty. At this stage, it would not be inappropriate, if I point out the fact that, the medical officer vide Ext-3 has diagnosed the injuries sustained by PW-3 to be grievous in nature. The injuries like multiple cut injury on the scalp, chest back, (R) forearm with raw area scalp with exposed cranium definitely falls within the definition of grievous hurt as per Section-320 of IPC and such facts compels the court to hold the accused Md. Amir Ali guilty of commission of offence under section-326 of IPC.

104. Hon'ble Apex Court in **C. Goel Vs. State, AIR 1956 SC 731** held that "An injury, by a cutting instrument which is dangerous to human life amounts to grievous hurt within the meaning of section-326 of IPC. The injuries caused upon the body of victim Hasen Ali are multiple cut injury on the scalp, chest back, (R) forearm with raw area scalp with exposed cranium. The injuries are obviously dangerous to human life and falls within the ambit of grievous hurt. Hence, this court has no hesitation in its mind to hold the accused Amir Ali guilty of commission of offence punishable under section-326 of IPC.

105. Now, in respect of other offences like forming unlawful assembly, commission of rioting with deadly weapons and causing grievous injuries in prosecution of common object by the other accused persons, the witnesses

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failed to prove such fact and the prosecution side failed to adduce any cogent and trustworthy evidences which may prove those offences punishable under section-147/148/149/323/324 of IPC.

106. In the result, this court not finds any implicating and cogent evidences against the remaining accused persons that may prove the participation of remaining accused persons with the alleged incident. Hence, it can be safely decided that the prosecution side failed to prove any charges against the remaining accused persons, namely, Md. Hasmat Ali, Md. Abdul Hamid, Md. Abdul Azit, Md. Kajimuddin, Md. Abdul Barek and Md. Abdul Rahim. Hence, the accused persons, namely, Md. Hasmat Ali, Md. Abdul Hamid, Md. Abdul Azit, Md. Kajimuddin, Md. Abdul Barek and Md. Abdul Rahim are acquitted and set at liberty forthwith. The validity of the bail bond of the accused persons extended for six months till the accused filed a fresh surety under section-437A of Cr.P.C whichever is earlier.

107. Therefore, in the light of all the aforesaid discussion, this court finds that the prosecution side safely bring home in the charge u/s-326 of IPC against the accused Md. Amir Ali and proved the case beyond any shadow of doubt. Hence, accused Md. Amir Ali stands convicted for the commission of offence punishable under section-326 of Indian Penal Code.

"REASONS UNDER SECTION 361 OF CRPC"

108. The accused person named Md. Amir Ali of this case caused multiple cut injury on the scalp, chest back, (R) forearm with raw area scalp with exposed cranium upon the body of victim Hasen Ali violating his fundamental right to lead a healthy life. Now-a-days, majority of criminal cases, more in particular, in the criminal courts, are "Hurt" cases and there is no criminal Court without these cases. Hence, the guilty or wrongdoers needs to be dealt with stringently to prevent the necessary evils and menace from the society. In this case the accused named Md. Amir Ali appears to be above 42 years of age and he has committed an act of causing grievous hurt to the victim named Md. Hasen Ali

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and such grievous hurt like multiple cut injury over the scalp, chest, back, (R) forearm with raw area scalp with exposed cranium caused by stabbing the victim Hasen Ali with an weapon like sword and that might have caused death to the victim. Such injury of the victim could be threat of life of victim if such injury heightened to more serious. As such, this court finds it reasonable not to extend the benefit of section-3&4 of Probation of offenders Act to the accused person.

"SENTENCE HEARING UNDER SECTION-248(2) CRPC"

109. The accused named Amir Ali, heard on the point of sentences in view of section-248(2) of Cr.P.C, where he claimed leniency and pleas of accused are recorded in separate sheet and tagged with the case record. The accused claimed to be a person of 42 years of old.

"ORDER ON SENTENCE"

110. The prosecution side during the entire trial failed to adduce evidence to prove any of such previous antecedents of accused Md. Amir Ali and during the sentence hearing the accused claimed him to be a bread earner of his family. Considering all those aspect coupled with the fact of no criminal antecedents and present age of the accused, this court finds that following sentences would meet the justice. Accordingly, the accused Md. Amir Ali is convicted commission of offences under section-326 of IPC under the following heads:-

The accused Md. Amir Ali sentenced to undergo R.I for a period of 7 years and shall have to pay a fine of Rs. 2000/- i/d 3 months of S.I for the offence u/s 326 IPC.

111. Let the fine amount shall be given to the victim of this case as compensation in case of realization.

112. The convict accused Amir Ali taken to judicial custody and sent to Central Jail Sonitpur, Tezpur for serving sentence passed against him. Let a periods if any, under gone by the accused person during inquiry, investigation and trial if any, shall be set off as per section-428 Cr.P.C.

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113. Let a copy of this judgment be furnished to the accused person Md. Amir Ali free of cost.
114. Considering the nature of injury sustained by the victim Md. Hasen Ali this court opined that fine amount as ordered if paid, would be the adequate compensation for the victim. Hence, this court not finds just and reasonable ground to recommend the name of the victim before the DLSA, Sonitpur for providing adequate compensation.
115. Accordingly, the case is disposed of. Judgment is prepared and pronounced in open court. Given under my hand and seal of this court on this 09th day of November, 2021 at Tezpur, Sonitpur.
116. A copy of the judgment and order shall also be forwarded to the District Magistrate, Sonitpur in compliance with section-365 Cr.P.C.

**(Sri N. J. Hoque)
Chief Judicial Magistrate,
Sonitpur: Tezpur**

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ANNEXURE

1. Witnesses for Prosecution:-

PW-1:- Md. Hatem Ali, Informant
PW-2:- Must. Firuja Begum,
PW-3:- Md. Hasen Ali, Victim
PW-4:- Md. Hussain Ali,
PW-5:- Md. Abed Ali,
PW-6:- Md. Raizul Islam,
PW-7:- Must. Afia Begum,
PW-8:- Sri Dharani Dhar Deka, I.O
PW-9:- Dr. Koushik BhuyanKeot, M.O.

2. Witnesses for Defence:-

DW-1:- Sri Rabindra Kumar Sarkar

3. Court Witnesses:- NIL

4. Prosecution Exhibits:

Ext-1 :- FIR
Ext-1(1) :- Signature of PW-1
Ext-1(2) :- Signature of PW-8
Ext-2 :- Sketch Map
Ext-2(1) :- Signature of PW-8
Ext-3 :- Medical Report
Ext-4 :- Charge-Sheet
Ext-4(1) :- Signature of PW-8
Ext-5 :- Medical Report of Md. Hussain Ali
Ext-6 :- Medical Report of Md. Abed Ali
Ext-7 :- Medical Report of Md. Hatem Ali
Ext-8 :- Medical Report of Md. Raizul Ali
Ext-9 :- Medical Report of Must. Afia Begum

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5. Defence Exhibits:-

- Ext-A :-Certified copy of FIR Form of Dhekiajuli PS Case No-356/12
- Ext-A(1) :- Certified copy of Ejahar
- Ext-A(2) :- Signature of O/C Ananta Das.
- Ext-B :- Sketch Map
- Ext-B(1) :- Signature of DW-1
- Ext-C :- Place of Occurrence
- Ext-D :- Charge Sheet of Dhekiajuli PS Case No-356/12
- Ext-D(1) :- Signature of DW-1

6. Material Exhibits: NIL

**Chief Judicial Magistrate
Sonitpur, Tezpur**