

GR 690/12
(State of Assam Vs Md Sadar Ali &Ors)

<p><u>IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE</u> <u>SONITPUR, TEZPUR, ASSAM</u></p> <p>Present : Smti P Chakravarty Addl. Chief Judicial Magistrate Sonitpur, Tezpur</p> <p>Date of judgment : -09.09.2022</p> <p>U/S 147/148/149/447/325/427 of IPC</p> <p>Details of FIR/Crime and Police Station</p>	
Complainant :	<p>State of Assam Or Smti Rekha Rana W/O Sri Padmal Rana(Sarki) Vill-Barghat (Jarani) P.O. Khalihamari PS Tezpur</p>
Represented by :	<p>Sri. P. Baruah, Learned Addl. Public Prosecutor</p>
Accused :	<p>i) Sadar Ali S/O Lt Roushan Ali ii) Abdul Karim S/O Maniruddin iii) Samar Ali S/O Lt Roushan Ali iv)Fakaruddin Ali Ahmed S/O Md Sadar Ali v) Noor Mahammad S/O Lt Abdul Gafur vi) Ramjan Ali S/O Lt Abdul Gafur All of R/O- BarghatJarani PS-Tezpur</p>
Represented by :	Sri AK Saikia

GR 690/12
(State of Assam Vs Md Sadar Ali &Ors)

Date of offence :	24-03-12
Date of FIR :	24-03-12
Date of Charge sheet :	31-08-12
Date of commencement of evidence :	26.9.14, 14.9.15,21.9.15,22.4.16,6.5.17,9.8.17,3.5.18,25.6.18,3.8.18,12.11.18,4.10.19,6.2.20,29.1.22
Date on which judgment is reserved :
Date of judgment :	09.09.2022
Date of Sentencing order, if any :	Nil

ACCUSED DETAILS:

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention undergone during Trial for purpose of Section 428, Cr.P.C.
1.	Sadar Ali	Nil	28.1.14	U/S 147/148//447 /325/427IPC R/W Sec. 149 IPC	Convicted	Nil	Nil
2.	Abdul Karim	Nil	28.1.14	U/S 147/148//447 /325/427IPC R/W Sec. 149 IPC	Convicted	Nil	Nil
3.	Samar Ali	Nil	28.1.14	U/S 147/148//447 /325/427IPC R/W Sec. 149 IPC	Convicted	Nil	Nil

4.	Fakaruddin Ali Ahmed	28.3.12	9.5.12	U/S 147/148//447 /325/427IPC R/W Sec. 149 IPC	Convicted	Nil	Nil
5.	Noor Mahammad	Nil	28.1.14	U/S 147/148//447 /325/427IPC R/W Sec. 149 IPC	Convicted	Nil	Nil
6.	Ramjan Ali	Nil	28.1.14	U/S 147/148//447 /325/427IPC R/W Sec. 149 IPC	Convicted	Nil	Nil

JUDGMENT

1. The prosecution case arises out of an ejahar lodged by one Smti Rekha Rana stating inter alia that she has hereditary property of 33 bighas land but the accused persons along with some miscreants of her locality had been trying to take possession of 12 bigha land out of this. Subsequently on 24-03-2012 the accused persons had damaged the house which was built on her land and assaulted the laborers engaged by her for cultivation, with dao, axe etc, and caused them severe injuries along with her family members when the latter had tried to interfere. Later on, her mother, sister and other persons viz 1) Sadir Ali Akand 2) Ahmod Ali Akand 3) Mahammad Ali Akand 4) Halima Khatoon and 5) Najima Khatoon took treatment at Tezpur Civil Hospital for their injuries. Hence, this case.

2. On receipt of ejahar, Tezpur PS case no. 384/12 U/S 147/148/149/447/325/326/427 IPC was registered. ASI Idrish Ali was entrusted with pre-step and SI Musaddique Hussain of Borghat OP was entrusted with the investigation of this case. After completion of investigation the police filed charge-sheet against the accused –i) Ramjan Ali @ Islam ii) Sadar Ali iii) Abdul Karim iv) Samar Ali v) Maral @ Fakaruddin Ali Ahmed and vi) Noor Mahammad u/s-

147/148/149/447/325/427 of the Indian Penal Code. At the relevant point of time, on receipt of summons accused persons Md Sadar Ali, Noor Mahammad, Samar Ali, Abdul Karim, Fakaruddin Ali Ahmed and Ramjan Ali appeared before this Court and they were furnished copies as mandated u/s 207 CrPC. Having found a case against the accused persons u/s- 147/148/149/447/325/427, of I.P.C., charge under said sections of law was framed, read over and explained to the accused to which they pleaded not guilty and claimed to be tried.

3. The prosecution examined as many as 16 (sixteen) witnesses and defence examined none. Statement of the accused were recorded U/S 313 Cr.P.C. The defence plea is of total denial; defence declined to adduce any evidence.

Points for determination are :-

i) Whether the accused persons on 24-3-12 were the members of an unlawful assembly, and in prosecution of the common object of such assembly, with intent to assault the informant, had committed the offence of rioting and is liable to be punished Under Section 147 R/w sec-149 IPC?

ii) Whether the accused persons on the same day being members of an unlawful assembly were armed with deadly weapons namely-dao, axe etc and in prosecution of the common object of such assembly, committed the offence of rioting with the said weapons, and thereby committed an offence punishable under Section 148 R/w sec-149, of IPC ?

iii) Whether the accused persons on the same day being the members of an unlawful assembly, and in prosecution of the common object of such assembly, voluntarily caused grievous hurt to her family member and labourers and thereby committed offence punishable U/S 325 R/w sec-149

of IPC ?

iv) Whether the accused persons on the same day being the members of an unlawful assembly, and in prosecution of the common object of such assembly, committed mischief by causing wrongful loss or damage to the property of the informant and thereby committed an offence punishable U/S 427 R/w sec-149 of the IPC ?

v) Whether the accused persons on the same day being the members of an unlawful assembly, and in prosecution of the common object of such assembly, committed criminal trespass by entering into the house of the informant with intent to commit an offence to intimidate and thereby committed the offence punishable under Section 447 R/w sec-149 of IPC?

DISCUSSION OF EVIDENCE

4. **PW1 Smti Rekha Rana is the informant** and she has deposed that she knows the accused persons as her co-villagers. On 24-03-12 at about 9.30 am, the accused persons had assaulted Ahmat Ali, Mohammad Ali, Sadir Ali, Nurul and other two women in the field. They hit them with daos on their heads and the injured persons fell on the ground. They injured six nos of people. At the time of the occurrence she was present there. She has identified her ejahar as Ext. 1 whereupon Ext.1(1) is her signature.

In cross-examination, PW1 stated that the alleged incident occurred in connection with 33 bighas of land and out of which 12 bigha was the disputed land. She stated that she had not mentioned the dag No and patta no of the 12 bighas land in her ejahar. She stated that the time of occurrence was 9/9.30 and at about 9.45 police personnel from Borghat Out Post reached at the place of occurrence. One Bhula Nath had

brought the police and he is still alive. At that time 104 vehicle came and took the injured persons to hospital. The informant further stated that she had narrated the incident at about 2 pm to the then SP Ananda Kr Tiwari and thereafter she had narrated the incident in written to the S.P. vide Ext.1. On the same day the ejahar i.e. Ext.1 was lodged in Tezpur PS. She further stated that police had recorded her statement. She denied the suggestion that there are 4 nos of houses over the 12 bighas of land and those houses belong to the accused persons.

In further cross-examination she has stated that whether Rudra Bir and others had filed a civil suit vide TS No 79/82 in order to get possession over the disputed land along with the other dependents. The T.S No 79/82 had not been visited with regard to the disputed land of this instant case. The subject matter of TS No 79/82 is a different one. She knows that the wife of Sadar Ali, Mafila Khatoon had lodged one case in connection with the alleged incident and the said case is pending for trial before the Hon'ble Court. The accused persons did not sustain injury in connection with the preset alleged incident of assault. It is not a fact that the disputed land belongs to Sadar Ali and there are houses belong to Sadar Ali over the disputed land. It is not a fact that she had sent several people on the date of the alleged incident in order to dispossess the accused persons from the disputed land. It is not a fact that the accused persons had not assaulted them. It is not a fact that she had filed a false case against the accused persons in order to escape from the guilty which has arisen due to her illegal act of dispossessing the accused persons from the disputed land. In her statement made before the police she had stated that on the date of the alleged incident she had been to the field but she did not state that she had been to the field to sow the seeds. It is not a fact that she did not visit the place of occurrence on the date of the occurrence and she did not witness the incident her own eyes. It is not a fact that the accused persons had not caused injuries to any person.

PW2 Sri Padma Lal Sargi is stated that the informant is his daughter. He deposed that on 24-03-12 i.e. the date of the occurrence he was at home. On that day he had engaged Ahmad, Mahammad, Nurul Haque for cultivation and also arranged them to stay on her land. On hearing "hulla" he came outside and saw that accused persons had assaulted his labourers. When police came they fled away. Accused persons assaulted them and caused injuries.

In cross-examination, PW2 stated that the disputed land belong to them. He has further stated that at the time of the alleged incident, he was in his house and on hearing halla, he came out and by the time he reached the place of occurrence, there were severe fighting going on between both the parties but he could not say who had stabbed whom. He further stated that his daughter Rekha Rana brought the police from Borghat Police Out Post. Police reached 15 minutes after the incident. Police thereafter sent the injured to the hospital. PW2 admitted that the accused Sadir Ali was also injured over his head. He further stated that he could not say whether any civil case is pending in respect of the disputed land

PW3 Smti Chandani Charki deposed that the occurrence took place on 24-03-12 at about 9.30. Accused persons were armed with dao, spear and lathi etc. had assaulted the persons who were working in her land. The wives of Sadir Ali and Ahmad Ali were working at their homes and accused persons also hit on their head with a dao and caused head injury. The son of Sadar Ali namely Morol Ali had hit Rekha Rana. The injured were carried to the civil hospital.

In cross-examination, she stated that the disputed land measuring 12 bighas is a myadipatta land and over the said 12 bighas of land still there are $\frac{3}{4}$ houses and those houses belong to them. She further stated that the time of occurrence was 9-9.30 and there were 100/150 people who had gathered near the place of occurrence hearing the hulla out of whom Jabbar, Sirajuddin, Samsul, Kitab Ali etc were there and they were still

alive. She further stated that on the date of the occurrence the Adhiyars working under the informant were tiling the land.

PW4 Sri Bal Bahadur Chetri deposed that the occurrence took place in their land. At the time of the occurrence, he was going to pick up his daughter from Tezpur University by a bike and he saw that in front of his land, near the main road, one vehicle bearing No AS-12G 9786 red colour Maruti Car was stationed. He also stopped his bike. Then accused Sadar Ali, Islam Ali, Karim Ali, Samar Ali, Moinuddin, Fakaruddin, Halema Khatoon ran near the house of Iman Alito the vehicle owned by Mustafa Ahmed. Mustafa opened the dicky of the vehicle and took out lathi, spear, sword etc. and instructed the accused persons to assault the labourers working in his field. Md Ali, Ahmat Ali, Sadik Ali, Nuruddin were ploughing and then the accused persons armed with weapons beat them. They also caused head injury on the sister and wife of Sadik Ali. Nuruddin and Ahmed Ali sustained severe injuries. Accused Sadar Ali cut off the hand of Ahmed Ali and his hand was hanging.

PW5 Smti Tulsi Devi is the mother of the informant. She deposed that about 5 years ago, the occurrence took place on her land. She was present on the day of the occurrence. She gave permission to Mahammad, Ahmed, Nurul to cultivate on her land and built house over the same for residing there, but the accused persons had broken down the houses. Noor Islam, Islam, Karim and other persons assaulted Ahmed, Mohammad, Nurul and Sadir. They also assaulted the women who were cooking at that time. Fakaruddin hit on her forehead with a lathi and she had to take treatment.

PW6 Sri Kajol Ghosh is the seizure witness. He deposed that at the time of the occurrence he was Ward Member of Panchayat. The O/C, Borghat OP met him at Napam and as per his instruction, he gave his signature on the seizure list i.e. the Ext.2. He stated that he did not see the seized articles.

PW7 Sadir Ali has stated that on 24-3-12 at about 9/9.30 am, he was ploughing. At that time Sadar Ali, Noor Mahammad, Islam, Karim, Nazima, Maral, Nizamuddin armed with weapons and assaulted him. They also got the house of the informant damaged, situated in the field. He sustained injuries on his head and arms. Police came and sent him to Medical.

PW8 Mohammad Ali has deposed that on the day of the occurrence, while he was ploughing, accused Samar Ali, Sadar Ali and Meher Ali assaulted him. Along with him, Sadir Ali, Ahmed Ali, Noor Amin, Mahila Rahima khaton and Hasina Begum were also ploughing and they were also assaulted by all the accused persons. He sustained injury on his hand and head. Two women along with all other persons also sustained injuries. Police came to the place of occurrence. He took treatment at Tezpur Civil Hospital whereas Ahmed Ali was taken to Gauhati for his serious injuries.

PW9 Ahmed Ali Akram has deposed that on the day of the occurrence, he was ploughing on the land of the informant. At that time his brother Sadir Ali, Hasina Begum and Rahima Khatoon were in the house adjacent to the paddy field. The house belongs to informant, Rekha Rana. All the accused persons trespassed into the house of the informant which is adjacent to the paddy field and assaulted Sadir Ali, Hasina and Rohina and also caused damage to the house. Thereafter they went to the paddy field and assaulted him and his brother Md Ali with lathi and sword due to which he sustained injuries in his arm and head. Due to the said incident, his brother and aforesaid two ladies also sustained injuries. On informed, ambulance 108 came to the place of occurrence and took them to Civil Hospital for treatment. He was treated at Tezpur for 4 days and thereafter he was sent to Guwahati for advanced treatment and there he was treated for three months.

PW10 Nurul Amin has deposed that the occurrence took place in the year 2012. At the time of the occurrence he, Ahmed Ali, Mahammad

Ali, Nurul Amir, Hasena Begum, Rahima Begum were working in the field and all the accused persons assaulted him. Accused Abdul Karim and Noor Mahammad hit him on his head and back and he fell down the ground. Thereafter he does not know who had saved him. He was taken to Hospital and had been treated there from 24-3-12 to 2-4-12.

PW11 Mustt Hasina Begum has deposed that the occurrence took place in the land of the informant at about 9.30 am. They were doing 'Adhi' on the land of the informant. On the day of the occurrence her husband was ploughing on the said land. She went to give breakfast for her husband and saw that accused persons had assaulted her husband Sadir Ali, Mohammad Ali, Nurul Amin and Ahmod Ali. Accused persons also hit her sister-in-law Rahima with a sword at her house. Accused Sadar Ali assaulted her and accused Islam assaulted Rahima. Accused persons assaulted all of them with a sword on their heads. Accused Sadar snatched away her jewellery. Ahmod Ali and Nurul Amin sustained grievous injuries on their heads.

PW12 Mustt Rahima Khatun deposed that about seven years ago while she has visited her parental house at Borghat Jaroni, he was asked by his sister-in-law Hasina Begum to accompany her to the paddy field for serving meal to her brothers who were ploughing over there. When she had reached the paddy field she saw that accused Samar, Sadar, Korim, Nur Mahammad, Islam and Morol were assaulting her brothers namely Sadar Ali and Mohammad Ali. On being protested by her, accused persons also assaulted her and for the said assault she received treatment at the hospital. Police interrogated her.

PW13 Dr PK Kalita deposed that on 24-03-2012 while he was working as Senior M & H.O at Kanaklata Civil Hospital, Tezpur, on that day he examined Md Sadir Ali, Md Ahmed Ali, Mustt Hasima Begum and Mohammad Ali. On examination, he prepared reports vide Ext.6,7, 8 and 9 and Ext.6(1), 7(1), 8(1) and 9(1) are his signatures thereon.

18. **Dr Jhorna Kakaty** is examined as **PW 14**. She has deposed that on 24-03-12 while she was working as Senior Medical and Health Officer at Kanaklata Civil Hospital, Tezpur, on that day she examined Md Sadir Ali, Md Ahmed Ali, MUstt Hasima Begum and Mohammad Ali. After examination, she prepared report as Ext.6, 7, 8 and 9 whereupon Ext.6(1), 7(1), 8(1) and 9(1) are her signatures thereon.

PW15 Dr Nilakhi Das is the medical officer and she deposed that on 25-04-12 while she was posted as Senior M&HO at Kanaklata Civil Hospital, Tezpur, on that day she examined one Rahima Khatun. After examination she prepared a medical report as Ext.10 whereupon Ext.10(1) is her signature.

This in nutshell is the evidence on record.

DECISION AND REASONS THEREOF

I have heard the prosecution and defence side at length. The Id. Adv. for the accused persons has advanced his oral as well as written argument and the same has been discussed below.

Written Argument for the accused

The Id. Counsel for the accused has at the outset of his argument referred to the fact that in the ejahar, the names of 9 nos of accused have been mentioned, they are Mustafa Ahmed, Md Islam, Sadar Ali, Karim, Samar, Moral, Monoruddin, Nur Mohammad and Nazimabut in the charge sheet there appears names of only 6 nos of accused. They are i) **Ramjan Ali @ Islam ii) Sadar Ali iii) Abdul Karim iv) Samar Ali v) Maral @ Fakaruddin Ali Ahmed and vi) Noor Mahammad**. He further referred to the evidence of the **Pw1, Rekha Rana** who had described the boundary of the disputed land as-In the East Sambhu, West not known, in the North Rudra Bir, South land of Rudrabir.

Similarly, the **PW2 Padmalal Rai Sarki stated that**-In the East PWD road, West some muslim people's residence, North our land. South our land.

PW3 Chand Charki stated that-In the East Ruda Bir's land who is my father in law, On the West Iman Ali, North Mon Bahadur Charki's land. In the South our land.

PW4 Bal Bahadur Charki stated that in the east PWD road. On west Iman Ali, Barek Ali and Hakim Ali's land and my house. North Southern Bahadur Charki who is my father-in-law.

PW5 Tulsi Devi stated that in the east there is a road and on the other side of the road, there is land of Iman Ali, In the west there is our land of 12 bigha land. In the north my father in-law Rudrabir's land, On the south my father-in-law Rudrabir's land.

PW6, stated he does not know anything.

PW7 Sudhir Ali stated, In the east road. On the west Iman Ali's land. In the north house of the informant. In the south informant's family member's land.

PW8 MD Ali Akand, stated In the east PWD road. Bareki's land in the Bal Bahadur

in the south Bal Bahadur and Padma's land.

Pw-9 Ahmed Ali AkramstatedIn the east Government land cultivation land of Irak Ali. In the south land of Rekha Rana.

PW10 Nurul Amin stated thatIn the east, govt land. On west Iman Ali's house.In the North Bir Bahadur and their brothers, On the south Mon Bahadur's land.

PW11 Hasina Begum who stated that In the east there is public road. In the west there is Hiran's land. In the north I have forgotten. In the south market.

PW12 Rahima Khatoon stated that she could not remember the boundary of the land which is under cultivation.

The Id. Counsel has further argued that in the ejahar, the informant Rekha Rana has alleged that the accused persons had assaulted total 7 nos of persons including her family members and they were her mother, her sister, Sadir Ali Akand, Ahmed Ali Akand, Md Ali Akad, Halima Khatoon and Nazima Khatoon but doctor had examined Nurul AliAkand, Rahima Khatoon, Hasina Begum, Ahmed, Ali Sadir, Ali Md Ali. There is no mention of the names of Nurul Ali Akand, Rahima Khatoon and Hasina Begum in the ejahar. Although there are two nos of medical certificates against all these three injured persons but there are no any medical report of the injured Halim Khatoon and Nazima Khatoon. Although their names were mentioned in the ejahar as injured persons. Moreover, although the prosecution has examined Nurul Ali Akand, Rahim Khatoon and Halima Khatoon as the victim of this case and their medical examination reports of these three witnesses but in the ejahar their names were not mentioned as the injured. PW1 Rekha Rana stated in her evidence that he accused persons had assaulted Ahmed Ali, Md Ali, Sadir Ali, Nurul and two women in the paddy field and also stabbed them over their head and injured six of them but in her cross-examination PW1 stated that the alleged incident had occurred at 9.30 am and at 9.45 am police had come to the place of occurrence and recorded statement of the witnesses. PW1 further stated in her cross-examination that she had written the ejahar herself and on the basis of her ejahar filed in Sadar police station she has deposed today in connection with this case but on perusal of the case record it is found that in regard to the same incident, the wife of he accused Sadar Ali namely Mofila Khatoon had also lodged

an ejahar. **PW2 Padma Lal Sarki** stated in his evidence that **Ahmad Ali, Mohammad, Nurul Haque** was assaulted by the accused persons but in his cross-examination he stated that **who had assaulted whom he did not see** and PW1 Rekha Rana had alleged the police 15 minutes after the alleged incident and about half an hour passed of the alleged incident, police had recorded his statement U/S 161 Cr.P.C. He further stated that he had seen cut injury on the head of Sadar Ali and that he has 12 bigha of land documents in his possession. **PW3 Smti Chandani Charki** stated in her evidence that the alleged incident had occurred just near her boundaries and the accused persons had assaulted the Adhiyars who were working for the informant with dao, lathi, spear etc. She further stated that the accused persons had assaulted Sadir Ali and Ahmed Ali and injured them badly. PW3 further stated that the informant Rekha Rana was assaulted by Moral Ali and one of them had injured the informant on her hand. In her cross-examination she stated that she has her house over 12 bigha of land and her statement was recorded by police within one hour from the alleged incident. She further stated that about 100/150 people had gathered at the place of occurrence as there was hue and cry and out of them Jabbar, Sirajuddin, Samsul Islam and Kitab had witnessed the alleged incident and they are still alive. The prosecution has failed to bring the said independent witnesses for examination in support of the prosecution case. **PW4 Bal Bahadur Charki** stated in his examination in chief named some unknown persons as the accused persons and he had named Moinuddin, Halema Khatoon, Karim Ali and Mustafa who are not the accused persons of this case. He stated that the said accused persons had assaulted the labourers who were working for the informant in the field and also vandalized the house of the informant. He further stated that these persons had also assaulted the sister and wife of Sadir Ali and stabbed them over their head. The said persons had also chopped off the hand of Ahmad Ali and Nuruddin's head was also stabbed. In his cross-

examination, he stated that in the year 1988 his father had filed a civil suit against Sadar Ali vide TS No 79/88 thereafter he stated that he could not say whether the said civil case was lodged regarding land dispute. At present there has been a case pending for the 12 bigha of land in order to evict the accused persons over the said land and that the case is pending for trial. **PW5 Tulsi Devi** stated that the accused persons Nur Islam, Islam, Karim and others had assaulted Ahmod, Mohammad, Nurul and Sadir and also assaulted two women who were cooking meals. Fakaruddin had also assaulted over her forehead and her daughter had filed this case. In her cross-examination Tulsi Devi stated that persons in their boundaries namely Kitab Ali, Subhan Ali, Ajit Ali has not been named as witnesses in connection with this case. Over the said and there has been some dispute going on in court. PW5 named the accused persons as Sadar Ali, Nur Islam and Karim. The said witness has pointed out towards the accused persons Noor Mohammad as Noor Islam, Abdul Karim as Karim and Sadar as Sadar. **PW6 Kajot Ghosh** stated that he did not see any quarrel between the accused persons. **PW7 Sadir Ali** stated that he was deposing for the first time in connection with this case and his statement was not recorded by police. He stated that Sadirali, Nor Mahammad, Islam, Karim, Nazima (not an accused in this case), Nizamuddin (not an accused in this case), Moral (not an accused in this case). The said persons had armed with dao, lathi etc came to the plot, assaulted him and also caused damage to the house of the informant. In his cross-examination he stated that the wife of the accused Sadar namely Mofila Khatoon has lodged one case vide GR Case No 701/12 alleging that her house was damaged by them and in that case he is also an accused. He further stated that his statement was not recorded by police in connection with this case.

Md Ali Akand(PW8) who is an interested witness has stated in his evidence in- chief that while he was ploughing the land of the informant at that time Samar Ali, Sadar Ali and Meher Ali (not an accused

in this case). This three persons came together and assaulted him along with Sadir Ali, Ahmed Ali, Nur Amin, Rahima Khatoon and Hasina Begum who were also ploughing land with him. The said persons sustained injury over their head and Ahmod Ali was treated in Guwahati as his injury was grievous in nature. In cross-examination, the witness stated that he is an accused in the case filed by Mofila Khatoon and in a case filed by the accused Sadar Ali U/S 147/447/325/324/326 IPC lodged in the year 2003/2004 in the court of SDJM(Sadar) and he was convicted and was sentenced to undergo two years imprisonment. The witness further admitted that in the case file by someone for murdering the brother of the accused Sadar Ali vide GR No 1323/003 he was arrayed as an accused for murdering the accused persons' brother Akbar Ali. He has further admitted that over the two decades of the disputed land, a civil case was pending and that case is at present dismissed. **PW7 Ahmad Ali** stated that at the time of the incident he and his brother Md Ali were ploughing the land and Sadir Ali was at his home and at that time accused persons entered into the house of the informant by illegally trespassing and assaulted Sadir Ali, Hasina and Rahima and also damaged the house. Thereafter the accused persons went to the paddy field and assaulted him and his brother Md Ali with lathi and daggar. As a result of which he and his brother sustained injury over their arm and head. In his cross-examination he stated that at the time of the assault, he besides him and his brother there were no other persons present in the place of occurrence. He further stated that the land over which they were ploughing as Adhiyar was the subject matter of this civil case. He admitted that in connection with GR Case No 1323/03, he was in custody for two months for the allegations of murdering his brother of Sadar Ali, Akbar Ali. **Pw10 Noor Islamis also found to be an interested witness** who stated that at the time of the incident he along with Ahmod Ali, Mohammad Ali, Nurul, Hasina and Rahima Khatoon have been working in the field and at that time, the accused persons had assaulted

him. He further stated that Abdul Karim and Noor Mahammad had assaulted him on his head and back as a result of which he lost consciousness and fell on the ground. In cross-examination he stated that he admitted that he is an accused in the cross case filed by the accused persons. **PW11 Hasina Begum (who is a defence witness)** stated that she was deposing for the first time in connection with this case and police had not recorded her statement. She stated that at the time of the alleged incident, she had gone to the paddy field for providing lunch to Sadir, Ali, Nurul Amin and Ahmod Ali who were ploughing land and then she saw that the accused persons Sadar Ali and Islam had assaulted Rahima and her brother-in-law with a sword and the accused Sadar Ali had looted her ornaments and also damaged her house. In cross-examination she stated that her husband and the others were arrayed as accused in the case filed by the accused persons. **PW12 Rahima Khatoon is also a chance witness** who had stated that she along with Hasina Begum had gone to the paddy field for providing lunch to Sadir Ali, Md Ali, and others and at that time Sadar Ali, Samar, Karim, Noor Mahammad, Islam and Moral had attacked Sadir and Mohammad Ali and when she tried to resist, the accused persons assaulted her. In cross-examination she stated that there was no other persons present at the place of occurrence besides her and her brother. **PW13 Dr PK Kalita is the Medical Officer** who has medically treated the injured persons stated in his cross-examination that he cannot definitely say whether he had medically examined the injured persons in connection with this case as no one had identified the injured persons before him when they were brought before him. **PW14 Dr Jharna Kakoti is another medical officer** who had stated in her cross-examination that she did not personally know the injured persons and she had examined them without any identification. **PW15 Dr Nilakhi Dasis another medical officer.**

PW16 Md Idrish Ali had confirmed the contradictions that were pointed out.

The learned counsel for the accused persons has also referred to some landmark judgments in connection with his defence i.e. –

- i) AIR 2003 SCC page 854.
- ii) (1996) 2 GLR Page 79 serious omissions amounts to contradiction statement made before I/O substantially differs with the statement given in court.
- iii) 2013(3) GLT 125
- iv) (2015) 1 SCC (CrI) 293 non-examination of material and disinterested witness fatal to prosecution.
- v) 2006 CrI L.J 3154(SC)
- vi) 2008(3) GLT 245 (Head note B) injuries on the accused not explained by the prosecution –accused entitled to get benefit of doubt.
- vii) (2010) 2 GLR 1
- viii) 2013(3) GLT 207, two views-one which is favourable to the accused must be taken.
- ix) 1981 CrI L.J. 164 SC Page No 164
- x) 1985 CrI L.J. NOC (GAUH) page 44 GD entry not proved.
- xi) 2013 CrI.L.J. 3140 (SC) May be true must be true
- xii) AIR 2003 SC 4089 investigation not done properly by I/O.

I have gone through the cited case laws and have perused the record as a whole. The facts and the subject matter of the instant case differs completely from the cited case laws, as such their applicability to the case at hand is least.

Now, for sake of convenience, all points for determination are taken up for discussion together.

It is found that the alleged offences against the accused persons are under sections 147/148/447/325/427 r/w sec-149 IPC, hence, in order to prove the allegations levelled against the accused persons, the

prosecution shall have to prove the existence of the essential ingredients of the alleged offences beyond reasonable doubt:

Accordingly, for arriving at a just decision as to whether the accused persons were involved in the said act of rioting or whether they had committed the act of criminal trespassing over the land of the informant and caused hurt to the injured persons or not let me discuss the evidence on record as a whole.

Here in this case, the **PW1 Smti Rekha Rana who** is the informant had stated in her evidence that on 24-03-12 at about 9.30 am, the **accused persons had assaulted Ahmat Ali, Mohammad Ali, Sadir Ali, Nurul and other two women in the field.** They hit them with daos on their heads and the injured persons fell on the ground. They injured six nos of people. At the time of the occurrence, she was present there. The version of the Pw-1 has been supported by the Pw-2 and the other Pws as the **PW2 Sri Padma Lal Sarki** has also stated that on the date of the occurrence he was at home and on hearing hulla, he came out and saw that accused persons had assaulted the labourers engaged by them in their land and caused them injuries. Similarly, the **PW3 Smti Chandani Charki** stated that the accused persons were armed with dao, spear and lathi etc. had assaulted the persons who were working in her land. The wives of Sadir Ali and Ahmad Ali were working at their homes and accused persons also hit on their head with a dao and caused head injury. The son of Sadar Ali namely Morol Ali had hit the informant Rekha Rana. The **PW4 Sri Bal Bahadur Chetri** also stated that the occurrence took place in their land and at the time of the occurrence, he saw that in front of his land, near the main road, one vehicle bearing No AS-12G 9786 red colour Maruti Car was stationed. Then accused Sadar Ali, Islam Ali, Karim Ali, Samar Ali, Moinuddin, Fakaruddin, Halema Khatoon ran near the house of Iman Ali to the vehicle owned by Mustafa Ahmed. Mustafa opened the dickey of the vehicle and took out lathi, spear, sword

etc. and instructed the accused persons to assault the labourers working in his field. Then the accused Sadar Ali cut off the hand of Ahmed Ali and his hand was hanging. The **PW5 Smti Tulsi Devi** also stated that Noor Islam, Islam, Karim and other persons assaulted Ahmed, Mohammad, Nurul and Sadir. They also assaulted the women who were cooking at that time. Fakaruddin hit on her forehead with a lathi and she had to take treatment. **PW6 Sri Kajol Ghosh** is the seizure witness he gave his signature on the seizure list i.e. the Ext.2. He stated that he did not see the seized articles. **PW7 Sadir Ali** has stated Sadar Ali, Noor Mahammad, Islam, Karim, Nazima, Maral, Nizamuddin armed with weapons and assaulted him. They also got the house of the informant damaged, situated in the field. He sustained injuries on his head and arms. **PW8 Mohammad Ali** has deposed that accused Samar Ali, Sadar Ali and Meher Ali assaulted him. The **PW9 Ahmed Ali Akram** has deposed that all the accused persons trespassed into the house of the informant which is adjacent to the paddy field and assaulted Sadir Ali, Hasina and Rohina and also caused damage to the house. The **PW10 Nurul Amin** has also deposed that all the accused persons assaulted him and the accused Abdul Karim and Noor Mahammad had hit him on his head and back and he fell down the ground. The **PW11 Mustt Hasina Begum** has also deposed that accused persons had assaulted her husband Sadir Ali, Mohammad Ali, Nurul Amin and Ahmod Ali and the accused persons also hit her sister-in-law Rahima with a sword at her house. The accused Sadar Ali assaulted her and accused Islam assaulted Rahima. Accused persons assaulted all of them with a sword on their heads. Accused Sadar snatched away her jewellery. **PW12 Mustt Rahima Khatun** deposed that the accused Samar, Sadar, Korim, Nur Mahammad, Islam and Morol were assaulting her brothers namely Sadar Ali and Mohammad Ali.

A compared reading of the evidence of all the Pws, on record reveals that most of the Pws have given a correct description of the boundary of the

disputed land as it could be found that in most cases, the boundaries are tallying with the description given by the informant and hence it can be inferred that the boundary description given by the informant is correct and hence it could be presumed that the land actually belonged to the informant. As such any act of criminally trespassing inside the land of the informant would clearly be a case of criminal trespass u/s 447 of the IPC and in the instant case most of the Pws have deposed in to the tune of the Pw-1 that the accused persons have been disturbing the peaceful possession of the informant over the disputed land and they had also dismantled the houses standing thereon belonging to the informant.

Thus, it is found that there had been committed an act of criminal trespassing over the said plot of land by the accused persons who had unlawfully assembled there to cause the said act of criminal trespassing and had also committed an act of rioting over there.

Then, in order to ascertain whether the accused persons had voluntarily caused grievous hurt to the victim; and whether the accused did so with the intention of causing hurt or with the knowledge that he would thereby cause hurt to the victim, the evidence on record is given a meticulous perusal.

Here, the informant i.e PW1 has stated in her FIR that the accused persons had entered into her land and assaulted her labourers and also hit her family members i.e. the victim PW2 and 3 with a sharp weapon i.e. a sword. She has also deposed the same fact in her evidence. Even the other PWs also has deposed to the same version of the informant. PW 2 being the victim and the other Pws being the injured has deposed that the accused person named Sadir Ali along with the other co accused persons on that particular day when the incident occurred along with the other co accused persons has threatened the victim that they will kill them and on the same day that all the accused person entered into the informant's land and dismantled the houses constructed thereon and assaulted the informant and the other injured with a **sword, which is a**

sharp instrument for cutting and caused hurt to them on several parts of their body. The version of PW1 has been duly corroborated by the other PWs who happens to be the eye witness to the fact. It could be established from the conduct of the accused person that they had criminal intention to cause harm to the victim i.e. PW1 and her family members. Although defence has argued that all the PWs were related witnesses, but their evidence cannot be discarded in totality as **it is settled law that merely a witness is related or interested, their evidence should not be discarded on that ground if their evidence are cogent and trustworthy and their evidence also inspired the confidence of the Court.** While the Court appreciated the evidence of related witnesses it should take most care and caution and strict scrutiny of their evidence is warranted. Here in this case, it is found that most of the witnesses for the prosecution were eye witness to the alleged incidents and most of them are the victims. Besides, there is ample corroboration regarding the incident in the evidence of PW1, PW3, PW4, PW6, as they were eye witness to the fact and it is obvious that if any offence of criminal trespass is committed it will be committed within the premises belonging to someone and in such premises, only their family members or close relative will reside and they become the prime witnesses to the fact that they have seen. So, I find nothing to disbelieve their evidence.

On top of it, the evidence of the M.O. i.e. the Pws 13, 14 and 15 is most relevant here. It is found that the M.O. have stated that the injuries sustained were fresh injuries. This implies that the deposition of the Pws have been duly corroborated by the evidence of MO and are also supported by the medical reports (Ext-3 to 10) so far as the injuries are concerned.

Thus, from the above it appears that the version of PW1 and the remaining Pws, being the victim of the case along with evidence of the other PWs is corroborated by the evidence of the Medical Officer i.e. PWs

13, 14 and 15 along with all other PWS. Although all the PWs were the related witnesses their evidence cannot be discarded in totality as interested witness. The **Hon'ble Supreme Court in Dalbir Kaur vs State of Punjab AIR 1977 SC 472** has held that a close relative, who is a very natural **witness** in the circumstances of a case, cannot be regarded as an '**interested witness**'.

Even **in Brathi Alias Sukhdev Singh v. State of Punjab**, AIR 1991 SC 318, the Hon'ble Supreme Court held that no doubt criminal court has to appreciate evidence given by **witnesses** who are closely related to the victim and the court must be careful in evaluating their evidence, but mechanical rejection of the evidence on the sole ground that the **witness** being related to the victim is an **interested witness** would invariably lead to miscarriage of justice.

Thus, from the above and relying on the decisions of the Hon'ble Supreme Court I found that the ingredients of section **324 IPC** has been fulfilled. Thus, the prosecution has able to prove that the accused persons in furtherance of their common intention have committed an offence punishable under section 324/149 IPC.

From the evidence on record, it is further found that the prosecution has given its best possible effort to prove the allegation levelled against the accused persons and has brought for examination most of the listed witnesses and most of the Pws are very material witnesses as they were the ones who had either witnesses the alleged incident or the ones who had got injured during the alleged incident of rioting and assault. The said Pws had unanimously stated that the accused persons had caused damage to the house of the informant which was constructed over the said 12 Bighas of land and during the said incident the accused persons had formed an unlawful assembly and each of them were the members of that unlawful assembly and in furtherance of their common object they

had committed the act of rioting, where the alleged incident had occurred and also caused injuries to several persons.

Thus, from the above it could be established that the prosecution has been able to prove that the accused persons have committed an offence under section 147/148/447/324/427, R/w sec-149 of IPC.

In view of the discussions done above, I am of the considered opinion that, the prosecution case is believable and it has been able to establish the case against the accused persons beyond reasonable doubt under the alleged offences **u/s-147/148/447/324/427, R/w sec-149 of IPC**

Sentence Hearing

I have heard the accused persons on the point of sentencing. The accused pleaded for leniency on the ground that they are the sole earning members of their respective family and they have become old and infirm due to their age related ailments.

I have considered for extending the beneficial provision **of Sec-3 of the Probation of Offenders' Act** to the accused persons, but could not find it justifiable to do so as because the offence committed by the accused person is not worthy to be given a lenient view as because the act of rioting committed by the accused persons had caused disturbance to the public peace and tranquility of that locality and it is found that they had been continuously doing the same for quite some time.

Hence, releasing the accused person on probation is not considered.

ORDER

In the result, it is found that prosecution has been able to drive home the guilt of the accused person namely- Md Sadar Ali, Noor Mahammad, Samar Ali, Abdul Karim, Fakaruddin Ali Ahmed and Ramjan Ali under the alleged offences **u/s- 147/148/447/324/427, R/w sec-149 of IPC.**

Hence, the accused persons **convicted under Sections- 147/148/447/325/427, R/w sec-149 IPC.**

In the facts of the present case, considering that the convicted persons are first time offender, and they have become old and infirm due to their age, I consider it fit to sentence them to a lumpsum amount of fine only. Accordingly, the convicted persons namely- **Md Sadar Ali, Noor Mahammad, Samar Ali, Abdul Karim, Fakaruddin Ali Ahmed and Ramjan Ali:-**

shall pay fine of **Rs.500/- (five hundred only) each for committing the offence punishable under Section 147 of IPC, i/d to undergo S.I. for five days.**

shall pay fine of **Rs.500/- (five hundred only) each for committing the offence punishable under Section 148 of IPC, i/d to undergo S.I. for ten days.**

shall pay fine of **Rs.500/- (five hundred) for committing the offence punishable under Section 447 of IPC, i/d to undergo S.I. for ten days.**

shall pay fine of **Rs.1500/- (One Thousand five hundred only) for committing the offence punishable under Section 324 of IPC, i/d to undergo S.I. for ten days.**

shall pay fine of **Rs.500/- (five hundred) for committing the offence punishable under Section 427 of IPC, i/d to undergo S.I. for five days.**

The fine amount, if recovered, will be deposited in the State Treasury.

Furnish a free copy of the judgment to the convicted persons forthwith.

The judgment is delivered in the open court, in presence of both the parties.

It is sealed, signed and tagged to the C/R.

Given under my hand and Seal of the Court this 09th day of September, 2022.

The case is disposed of on contest.

Dictated and corrected,

Addl. Chief Judicial Magistrate
Sonitpur, at Tezpur

GR 690/12
(State of Assam Vs Md Sadar Ali & Ors)

LIST OF PROSECUTION / DEFENCE / COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Smti Rekha Rana	Informant
PW2	Sri Padma Lal Sargi	Other
PW3	Smti Chandani Charki	Other
PW4	Sri Bol Bahadur Chetri	Other
PW5	Smti Tulsi Devi	Other
PW6	Sri Kajol Ghosh	Other
PW7	Sadir Ali	Victim
PW8	Mohammad	Victim
PW9	Ahmed Ali Akram	Victim
PW10	Nurul Amin	Victim
PW11	Hasina Begum	Victim
PW12	Rahima Khatun	Victim
PW13	Dr PK Kalita	Medical Officer
PW14	Dr JharnaKakoty	Medical Officer
PW15	Dr Nilakhi Das	Medical Officer
PW16	Md Idrish Ali	Investigating officer

B. Defence Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
Nil	Nil	Nil

C. Court Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
Nil	Nil	Nil

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS**1. Prosecution:**

Sr. No	Exhibit Number	Description
1	Ext.1	Complaint petition
2.	Ext.3	Medical report
3.	Ext.4	Medical report
4.	Ext.5	Medical report
5.	Ex.6	Medical report
6.	Ex.7	Medical report
7.	Ext.8	Medical report
8.	Ex.9	Medical report
9.	Ext.10	Medical report
10.	Ext.11	Sketch map
11.	Ext.12	Charge sheet

B. Defence:

Sr. No	Exhibit Number	Description
1	Nil	Nil

C. Court Exhibits:

Sr. No	Exhibit Number	Description
1	Nil	Nil

D. Material Objects:

Sr. No	Exhibit Number	Description
1	Nil	Nil