
(1999) 04 GAU CK 0030
In the Gauhati High Court
Case No : Criminal Appeal No. 116 of 1996

Abdul Hanif and Others	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 29-04-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 162, 164, 167, 209
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (1999) 2 GLT 177

Hon'ble Judges : N.C. Jain, J;B.N.Singh Neelam, J

Bench : Division Bench

Advocate : A.S. Choudhury, I. Hussain and R. Majumdar, for the Appellant; J. Singh, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Singh Neelam, J.—This criminal appeal is so preferred by the above named three accused/Appellants u/s 374(2) of the Code of Criminal Procedure, being aggrieved by the judgment of conviction and sentence so passed by the learned Sessions Judge, Nagaon dated 6th of May, 1996 in sessions case No. 143(N-3)/92 by virtue of which the learned Sessions Judge has convicted the accused/Appellants Under Sections 302 read with Section 34 of the IPC and after convincing them there under, they have been sentenced to undergo R.I. for life and also to pay a fine of Rs. 5,000/- in default, to undergo further R.I. for three months each. The period undergone by the accused/Appellants in course of proceedings is also directed to be set off under the provisions of Section 428 of the Code of Criminal Procedure.

2. The prosecution story, in nutshell, is that on 23.11.90 at about 4 P.M., when Md. Jakir Hussain (P.W.-2) alongwith Abdul Gani (since deceased) was returning from Kachua bazar and had proceeded towards hardly about 54 furlong from the Kachu P.S. which is located at Kachua bazar and both were proceeding towards their home, it is the accused/Appellants who coming from opposite direction,

surrounded them and accused/Appellants Abdul Jalil and Abdul Mannas pulled out daggers which they were concealing in their garments (lungi) and inflicted dagger blows upon Gani Mia. Jakir Hussain (P.W.-2) as per prosecution case, somehow managed to catch hold another accused Abdul Hanif for a while but seeing this accused Abdul Jalil son of Surat Ali proceeded as to assault Jakir Hussain (P.W.-2) son of Md. Ramizuddin as a result of which Jakir Hussain (P.W.-2) had no alternative but to release accused Abdul Hanif and then as per the further case of the prosecution, Abdul Hanif slashed the neck of Abdul Gani. Because of the injuries so sustained on the chest, neck and abdomen, Abdul Gani breathed his last. After inflicting the said injuries the accused/Appellants are said to have retreated to the direction from which they had come. P.W.-2 Md. Jakir Hussain son of Ramizuddin then ran to the Kachua P.S. situated nearby hardly at a distance of 140 Mtrs and gave the details of the cognizable offence taking place being seen by him also naming the accused persons. It transpires that on the statement so given by this witness Md. Jakir Hussain. G.D. Entry No. 424 was so made and the police on the basis of the statement of Md. Jakir Hussain after recording G.D. Entry, proceeded to the place of occurrence nearby and started investigation. At the spot, the full brother of the deceased gave his written report Md. Jalil by name on the basis of which formal FIR was so drawn up which is marked as Annexure-1 in course of trial. Abdul Jalil P.W.-1 while giving the detailed report also cited Hazi Md. Musakat Ali and Moslem Uddin as witnesses and they figured as P.Ws 4 and 5 in course of trial. P.W.-1 Abdul Jalil had also named Jakir Hussain (P.W.-2) to be the person along with whom his full brother Abdul Gani (since deceased) was proceeding towards his home when the occurrence took place at about 4.10 P.M. while giving his statement. P.W.-1 has also casually referred that his brother Abdul Gani was murdered because of the previous grudge in the hands of the named accused persons as the accused persons suspected the hand of Abdul Gani (since deceased) when sometime back the accused's father Surat Ali was so done to death and in the said murder because Abdul Gani (since deceased) also figuring as an accused. It further transpires that the police registered Kachua P.S. Case No. 79/90 u/s 302/34 of the IPC and after the completion of the investigation, chargesheet was so submitted vide chargesheet No. 1/92 on 3.1.92 against the three accused persons figuring here as Appellants. On the basis of the chargesheet so submitted, it further transpires that in GR Case No. 1861/90, cognizance of offence was so taken against the accused/Appellants and under the provisions of Section 209 of the Code of Criminal Procedure, the case record was so committed to the Court of sessions for their trial. The learned Sessions Judge framed charge against the above named three accused/Appellants u/s 302 IPC read with Section 34 of the IPC for their intentionally causing the death of Abdul Gani in furtherance of their common intention though the accused/ Appellants pleaded not guilty and claims to be tried. In course of trial, 7 prosecution witnesses have been examined whereas one D.W. is examined on behalf of the defence. Out of the P. Ws so examined, P.W.-1 happens to be the full brother of deceased who is though not an eye witness to the occurrence, has come forward

to say with regard to his rushing to the place of occurrence and seeing his full brother Abdul Gani in pool of blood, having severe injuries and dead. P.W.-2 is Jakir Hussain, the witness who at the time of occurrence as per the prosecution case was returning home along with Abdul Gani and claims to have seen the occurrence from nearby, the time of occurrence being 4.10 P.M. i.e. day time, P.W.-3 is Jalaluddin who also claims to be an eye witness and according to him he along with P.W.-4 Moslemuddin while was proceeding to the same direction from Kachua bazar by the same road and ahead them Abdul Gani (since deceased) and Jakir Hussain (P.W.-2) and all were also proceeding at a short distance when those witnesses (P.W.- 3) along with (P.W.-4) as per their statements had the occasion to see the accused/Appellants approaching from the opposite direction and brutally assaulting Abdul Gani with daggers. They have also stated that they came across Jakir Hussain P.W.-2 when seeing occurrence running towards the police station, P.W. 4 Md. Moslemuddin is another eye witness, who has also given his evidence on the same line as given by P.W. 3. P.W.-5 Masakat Ali is a passersby though he has not seen the occurrence because of his not having the chance to see the actual assault though he being at comfortable distance had an occasion to locate the accused/Appellants while escaping and running away having weapons in their hands and immediately after arriving at the place of occurrence, P.W.-5 found Abdul Gani dead. P.W.-6 is the Medical Officer who conducted the postmortem examination on the person of the deceased and postmortem report so prepared is proved and marked by this witness as Exhibit-5 and P.W.-7 is the Investigating Officer of this case. The statements of P.W.-2 Jakir Hussain who was accompanying Abdul Gani (since deceased) at the time of occurrence had also been recorded u/s 164 of the Code of Criminal Procedure and the said statement is proved and marked as Exhibit-4 in course of trial. D.W.-1 who is examined on behalf of the defence is on the point of alibi taken by one of the accused Hanif with regard to his being at Kampur bazar at the relevant time which has though been disbelieved by the learned Court below. The learned Court below after evaluating the evidence, oral and documentary available on record, has come to the conclusion that in course of trial, the prosecution had succeeded to establish the guilt of the above named accused/Appellants up to the hilt and they were found guilty of committing the offence coming under the purview of Section 302/34 of the IPC and they are thus convicted and sentenced thereunder as detailed above. It was found by the learned Court below that murder of Abdul Gani was intentionally so committed in furtherance of their common intention, specific overtacts are also attributed against all the three accused/Appellants coming under the purview of Sections 302/34 of the IPC for committing an offence of culpable homicide amounting to murder. It is against this judgment of conviction and sentence so passed, the accused/Appellants have preferred this criminal appeal.

3. Mr. A.S. Choudhury, learned Counsel for the Appellants is heard at length.

4. All the points so taken in this memo of appeal seeking interference with the impugned judgment of conviction and sentence so passed are pressed into

service. Firstly it is pointed out that in the instant case, though the G.D. Entry (Ext. 6) was so made at 4.15 P.M. on 23.11.90, the formal FIR was so drawn up on the basis of the written report of P.W. I said to have been given at 8 P.M. on the same night but surprisingly enough the same was placed before the Chief Judicial Magistrate on 29.11.90 reasons best known to the Investigating Officer and in course of trial, no explanation is given for this undue delay in the despatch of Exhibit-1 to the Chief Judicial Magistrate and the same as submitted by Mr. Choudhury was purposely made and this inordinate delay in despatching Ext. 1 to the Court was so purposely made as to falsely implicate the innocent persons namely, the accused/Appellants and to fabricate a case after due deliberation at the instance of the members of the prosecution side which thus is to be looked into with suspicion. In support of this contention, the learned Counsel for the Appellants has referred to a reported case 1981 Cri.L.J. 158 (Cal) Hardhan Char and others vs. State of W.B. Another point so raised is that admittedly the enmity was so going on between the family of the accused/Appellants—all the three accused/Appellants being full brothers and Abdul Gani (since deceased) and that because of the previous grudge with so many other persons also Abdul Gani was done to death by someone else and the accused/Appellants have falsely been implicated. As regards the three material prosecution witnesses so cited as eye witnesses and examined from prosecution side figuring as P.W.-2, P.W.-3 and P.W.-4, it is submitted that they are all closely related to the deceased and can well be said to be interested witnesses. Furthermore, evidence of P.W.-3 and P.W.-4 who are put as chance witnesses be thus not relied upon and they cannot be taken to be eye witness to the scene. So is the case with Jakir P.W.-2 who is also the relation of Abdul Gani and has falsely implicated the accused/Appellants. Attention is also drawn that at the time of submission of chargesheet in the witness column, names of good number of other independent witness were so shown to be witnesses for the prosecution but in course of trial those independent witnesses were not examined for which an adverse view can be taken on the point that the eye witnesses are interested witnesses and other independent witnesses so cited in the chargesheet are purposely not examined for which adverse opinion be drawn, the learned Counsel for the Appellants has cited and relied upon some of the reported cases in course of argument on this point and they are: State of U.P. Vs. Ballabh Das and Others, The evidence of the interested witness it is pointed out in the background of the reported case State of U.P. Vs. Ballabh Das and Others, is to be seen with care and caution in order to exclude possibility of false implication which has so not been done in the present case by the learned Court below. Other reported cases so cited on this point are Dargahi and Others Vs. The State of U.P., Shaikh Nabab Shaikh Babu Musalman and others Vs. State of Maharashtra, Sk. Nabab Sheikh Babu Musalman and Ors. v. State of Maharashtra. It is in the background of all these reported cases so cited, emphatically argued that when the eye witnesses are highly interested there is likelihood of their falsely implicating persons, on that basis the conviction be set aside. On the point that the independent witnesses cited were not hearsay witnesses, for which an adverse view may be

taken Mr. Choudhury has referred to a reported case 1979 Cri. L.J. 177 Bir Singh v. State of U.P. By referring to this reported case it is pointed out that it was the duty of the prosecution to produce the independent witness available and for examining only interested witnesses in the instant case, an adverse view can well be drawn which in itself can be a good ground for interfering with the impugned judgment of conviction in the instant case. On the same point Mr. Choudhury argued that when eye witnesses were interested, it was the duty of the prosecution as to adduce corroborative evidence which is not so been done in the instant case which is fata! to the prosecution story and he claims himself to be fortified with another reported case on this point and has cited Satyanarain Vs. State of Madhya Pradesh, In support of his contention it is submitted that D.W.-1 was so examined on the point of alibi which would have also been accepted and in this connection Mr. Choudhury has referred to a reported case- Dudh Nath Pandey Vs. State of Uttar Pradesh, and has particularly referred to paragraph-19 and has submitted that the plea of alibi postulates the physical impossibility of the presence of the accused at the scene of offence by reason of his presence at that very time at another place which was so satisfactorily shown on behalf of the accused/Appellants Abdul Hanif which is cryptically disbelieved by the learned Court below. Mr. Choudhury, learned Counsel for the Appellants has also taken us to the evidence of the P.Ws and has pointed out certain contradictions so cropping up in their evidence which can well be said to be major contradictions putting a dent upon the prosecution story so enumerated and has submitted that the learned Sessions Judge has failed to appreciate the evidence on record in its true perspective and the material contradictions and discrepancies cropping up would have been taken into consideration and thus taking the evidence as a whole it would transpire that the offence against the accused/Appellants under Sections 302/34 of the IPC was not proved beyond all reasonable doubts. Attention in this regard is particularly drawn to the evidence of P.W.-1 and 2 with regard to the source of information to P.W.-1 being given at the first instance which can be said to be unbelievable when after G.D. Entry so made on the basis of the statement of P.W.-2, he claims to have left towards Kachua bazar instead of going back to the place of occurrence which was not expected in normal course. P.W.-7 arriving at the place of occurrence along with P.W.-1 it is also pointed out even named the other son of Sural Ali namely Md. Abdul Hasim who was not sent up which will be so apparent by looking into Ext 1 and 6 as he was not being chargesheeted at the time of submission of the final form and no explanation comes from the prosecution side for introducing the name of Abdul Hasim and so the information of the cognizable offence so taking place given from the prosecution side may be said to be a bundle of information including atrandomly implicating all the sons of Sural Ali when according to the defence Abdul Gani (since deceased) was so murdered at some other place, the present accused/Appellants being not the assailants and it is a case of falsely implicating all the accused/Appellants in the hands of the interested/partisan witnesses as to fulfil the previous grudge so coming from before. In that light, hence the prayer is that the judgment of conviction and sentence so passed be thus set aside and

the accused/ Appellants rather be acquitted.

5. Mr. J. Singh, learned P.P. representing the State on the other hand has submitted that there is nothing wrong in the impugned judgment of conviction and sentence so passed by the learned Sessions Judge in connection with the present case and in the background of the facts and circumstances it is emphatically argued that the prosecution had succeeded to bring home the charge so levelled against the accused/Appellants up to the hilt, there are three eye witnesses to the scene fully supporting the prosecution case and have also well stood the test of cross examination. P.W.-2 has also given his statement on oath u/s 164 of the Code of Criminal Procedure (Ext.4) supporting the prosecution story and that by close scrutiny of the evidence available on record, it will transpire that all the grounds so taken from the Appellant side attempting to make a case for interference have no leg to a sand. In this connection, it is pointed out that P.W.-2 can be said to be a most competent witness who was with Abdul Gani at the time of occurrence on way back home and the occurrence took place within his sight for which he had an occasion to see from a very close distance, the time of occurrence being also at day time (4 P.M.). He has in detail given the sequence of events relating to the occurrence taking place detailing the overtacts so committed by these three accused/Appellants which resulted into Addul Gani being brutally murdered. P.W.-3 and 4 can safely be said to be the trustworthy witnesses cited as ocular witness on the point of seeing the occurrence and since the occurrence taking place at 4 P.M. it was very much probable that P.W.-3 and 4 also returning home, the path being the same have had an opportunity to see the occurrence when P.W 2 along with Abdul Gani was going ahead and they were surrounded by accused/Appellants coming from opposite direction. As regards P.W.-2 rushing to the police station is also in his evidence stated locating P.W.-3 and P.W. 4 when he was rushing to the police station. All these facts are the sequence of events relating to the occurrence with that of overtacts attributed against the accused/Appellants individually as submitted by the learned P.P. fmdfullcorroborationin P.W. 2, 3 and 4. The learned P.P. has submitted that true it is that if the material prosecution witnesses are related to the deceased, their evidence is to be seen with care and caution but it does not mean that if these witnesses are found of giving the true picture of a particular occurrence, only because of his being related to the deceased, their evidence is to be brushed aside. The learned Court below in the instant case, it is submitted finding them trustworthy has thus rightly relied upon the evidence of three eye witnesses i.e. P.W. 2, P.W.-3 and P.W.-4. The learned P.P. has in this connection also referred to a case as also cited in the impugned judgment State of U.P. Vs. Vinod Kumar (Dead) and Udai Bhan Singh, By referring to the Ext. lit is pointed out that the said written report on the basis of which formal FIR was drawn up was despatched from the police station to the Court on 24.11.90 itself at 10.00 A.M. Further more, even if it is placed on 29.11.96 before the Chief Judicial Magistrate, it will not at all be fatal to the prosecution case because of the existence of Ext. 6 which is the G.D. Entry so made by the police at the

instance of the details of the cogni7 offence taking place so given by Jakir Hussain P.W.-2 within 5 minutes of the occurrence in which even the names of the accused persons with that of the overtacts committed by them are detailed. That being the position the learned P.R by posing a question has humbly answered submitting that in such circumstance it is completely belies the scope for introducing the names of the innocent persons and implicating the accused/Appellants after meditation. In the present case since the btutal murder was so committed by no one else but the accused/Appellant the matter relating to the occurrence even giving the names Of the accused was reported to the police at 4.10 P.M. itself and the said information was such in nature which can safely be taken to be the first information received in the hands of the police on which even the investigation in the instant case was set in motion as coming from the mouth of P.W.-7 the Investigating Agency, hence it was simply a mis-direction on the part of the police officer of the said police station as to record the said statement of P.W.-2 as G.D. Entry and to wait for recording the statement of P.W.-1 at the place of occurrence so recorded at 8 P.M. on the same night in course of investigation which can even be said to be hit by the provisions of Section 162 of the Code of Criminal Procedure and the learned Sessions Judge while applying his judicious mind was also preferably justified in holding that in the instant case because on the basis of the (ID. Entry (Ext.6)4 the InvestigatiOn had started, the sathe can safely be said to be the first information report so lodged and that the said statement is given within 10 minutes time in which even the names all these accused/Appellants with specific overtacts committed by them fmd place leaving absolutely no room for any concoction/fabrication/meditation to implicate the innocent persons. As regards the point so raised that some independent witnesses were withheld by the prosecution as being not produced as witnesses, attention is drawn to the chargesheeted witnesses and it is pointed out that all the material witnesses on the point of occurrence have been examined. P.W.-5 Haji ?Masakat Ali was no way connected with Abdul Gani? s family who was also been examined and has supported the prosecution story to the extent of his locating the accused! Appellants escaping with the weapons in their hands in most suspicious manner from the place of occurrence and on his arrival at the place of occurrence Masakat Ali seeing Abdul Gani (since deceased) having multiple injuries. It is also pointed out that other witnesses cited in the chargesheeted as witnesses, Sahabuddin was so found produced in the Court though not been examined it would be so apparent by going thorough the order sheet dated 5.10.95. The learned P.P. has also submitted that since the other witnesses of the chargesheet were formal and hear say witnesses and they could not be examined, hence the prosecution gave up their examination which is so apparent by going through the statement of those chargesheet eye witnesses examined u/s 161 of the Code of Criminal Procedure by the Investigating officer and since the case diary has also been filed as to arrive at a fmding to this effect, the Court is at liberty even to go through such statements. The learned P.P. has further pointed out that the learned Court below was perfectly justified in not accepting the alibi of accused Abdul Hanif so taken and since it was disbelieved

in all probabilities it would be taken that he was found present at the place of occurrence at the relevant time and rightly thus the view is taken by the learned Court below. The ocular evidence of the material prosecution witnesses on the point of fatal assault finds, as submitted, full support with that of the Medical evidence so given by P.W.-6 and in this connection at length, the learned P.P. has taken us to Ext. 5 which is the postmortem report. That being the position, it is pointed out that over and above there are three eye witnesses to the scene in the instant case there are other corroborative evidence also supporting the prosecution case and taking the worst view by referring to the provisions of Section 167 of the Code of Criminal Procedure, it is further pointed out that delay in receipt of the occurrence report by the Magistrate does not itself make out the case of the investigation to be tainted though in the present case acceptedly the first information report was so received in the hands of the police within 10 minutes of the occurrence giving full details of the cognizable offence taking place. The learned P.P. claims himself to be fortified on this point by a reported case *Pala Singh and Another Vs. State of Punjab*, . Non-examination of other witness does not make the evidence of other eye witnesses unreliable and by canvassing this point, the learned P.P. has 1 referred to another reported case 1998(1) SCC 765 . *Narain v. State of UP* Since Ext. 1 in the instant case cannot be said to be first information report being received by the police, the same is to be looked into only to the extent pennitted by the provision(s) of Section 162 of the Code of Criminal Procedure-that being the position, any minor contradiction so entering into the evidence of P.W.-1 who had reported in writing which was the basis of the drawing formal FIR has no adverse affect in the instant case particularly in the light of Ext 6. On this point Mr. Singh has referred to a reported case *The State of Bombay Vs. Rusy Mistry and Another*, On this point and on the point that the learned Court belowhasrighdyconsideredtheExt 6inplace of Ext. 1 to be the FLR. in the background of the facts and circumstances of this case, the learned P.P. has also relied upon another reported cases *Madru Singh and others Vs. State of Madhya Pradesh*, and *Sunil Kumar and others Vs. State of Madhya Pradesh*, The question of credibility of a witness has to be decided primarily by refening to the evidence of apaiticularwitness and finding out as to how the witness has faired in cross-examination and impression is credited by his evidence taken into?context of the other facts of the case. In the instant case because it is in the background of the set principle of the criminal jurisprudence it is pointed out that the evidence of P.W.-2 to P.W. 4 can safely be said to be trustworthy, consistent and liable to be relied upon which has rightly be relied upon and the learned Sessions Judge findings three eye witnesses supporting the prosecution case, also having other corroborative evidence, came to the conclusion with regard the accused/Appellants in furtherance of their common intention, intentionally causing the death of Abdul Gani at the time, date and place of occurrence and the impugned judgment of conviction and sentence so passed do not require any interference. Thus, in that light, it is pointed out that since the criminal appeal has no leg to stand, the same be dismissed.

6. After hearing both sides lawyers at length, we have carefully gone through the evidence oral and documentary available on the record. By looking into the inquest report and the postmortem report duly proved and marked as Exts. in course of trial, we do not feel hesitant in coming to the conclusion that Abdul Gani was murdered and it was a homicidal death so taking place and by looking into the nature of injuries so sustained, the vital parts of the body i.e. neck, chest and abdomen hit, force so used and the daggers sharp cutting weapon by which the injuries were so inflicted, sufficiently shows the murderous intention of the perpetrator and by inflicting such fatal blows that too repeatedly with force, were sufficient in the ordinary course as to cause the death of a person and all the elements of causing injuries with an intent to murder constitute the offence u/s 302/34 IPC in the instant case. The defence plea taken by the accused/Appellants that Abdul Gani was so murdered by someone else in darkness and was thrown on the road where his dead body was so found at about 4 P.M. on the fateful evening is also not at all believable. In normal course in such case if the person would have been murdered at some different place, the murderers would not have chosen a village road leading from bazar that too as to throw the body at a distance of hardly 200-250 mtrs. from the bazar in front of a police station as is the position in the instant case. That way, by once again evaluating the evidence we come to the conclusion that Abdul Gani was murdered at the place of occurrence i.e. at No.1 Kachua bazar road at a half furlong distance from the police station near the Kachua bazar. The point for consideration is whether there was/is sufficient evidence available as to convict the accused/Appellants under Sections 302/34 of the IPC holding that the accused/Appellants were perpetrators causing the offence i.e. intentionally causing his death and the blows so inflicted were sufficient in the ordinary course as to result into his death? In this connection it has also to be seen as to whether the evidence of P.Ws 2, 3 and 4 who are eye witnesses, can be said to be trustworthy and when admittedly they happened to be the relation of the deceased even after examining their evidence with care and caution they can be said to have been deposed in such a way as to give true state of affairs free from any embellishment? In this connection it has rightly being dealt with by the learned Court below that only because of a witness being relation of the deceased is not in itself sufficient as to brush aside his whole evidence if the evidence is trustworthy. After going through the evidence of 3 eye witnesses (P.W.-2, 3 and 4) we find, that they are giving the details of sequence of events relating to the occurrence taking place also detailing overtacts so committed by the Appellants conjointly when they had inflicted grievous injuries hitting the vital part of the body of Abdul Gani with daggers-sharp cutting weapon and that too applying force. As regards Abdul Hanif said to have slashed the neck of Abdul Gani, prior to that the co accused Jalil and Mannas as per the version of these three witnesses had already inflicted dagger injuries on his chest, neck and abdomen. That way, in the instant case, the daggers blows were so repeated and the death occurred also because of the injuries so sustained. As regard the eye witness P.W.-2, at the time of occurrence he was with Abdul Gani. so he can well be said

to be most competent and reliable witness on the point of assault. Further, two witnesses i.e. P.W.-3 and 4 as per the prosecution story were also on way to their houses at a short distance when from opposite direction they claimed of having the opportunity of seeing the accused/Appellants coming from opposite direction surrounding Abdul Gani and Jakir (P.W.-2) and the accused/Appellants inflicting injuries on Abdul Gani and they have detailed the specific overtacts committed by Appellants. There is corroboration also in the evidence of P.W.-2, seeing these two witnesses P.W.-3 and 4 coming towards the place of occurrence when he was rushing to the police station and the P.Ws-3 and 4 also stating of seeing P.W.-1 running to the police station nearby just after the occurrence. In our considered opinion, these eye witnesses have well stood the test of cross examination and thus we hold that the evidence of these three eye witnesses is quite reliable which has rightly been relied upon and taking their evidence as a whole it leads to the only conclusion with regard to the accused/Appellants being the perpetrator committing offence for which they stood charged. This will not be out of place to mention that even 164 Code of Criminal Procedure statement of P.W.-2 was so recorded in which also he has fully supported the prosecution version and such a statement so made is proved and marked as Ext. 4. We also find much of strength in the argument so advanced by the learned P.P. that since P.W.-2 immediately after the occurrence had rushing to the nearby police station, relating to cognizable offence taking place even giving the details of the names of the accused/Appellants also details of the weapon used even the details with regard to the overtacts so committed by them jointly in furtherance of their common intention causing the death of Abdul Oath that in itself was sufficient for the police officer at the place as to take such statement as first information report. In the instant case though such statement was so recorded in the General Diary as G.D. Entry No. 424 at 4.15 P.M. but the investigation was set in motion and the police officer rushed to the place of occurrence hardly at a distance of half furlong and thus the investigation was also started. That way Ext. 1 in the instant case cannot be said to be first information report and it was just a mis direction which led the police officer at the spot as not to treat statement of P.W.-2 so given at the police station as the first information report. It is the P.W.-2 who had given such statement (Ex. 6) may be in hurry and it was so recorded in cursory manner but since it contained the statement regarding assault even naming the accused/Appellant attributing overtacts as to how the occurrence took place that was the first information so received by the police officer relating to the cognizable offence and taking the view that this statement was so given at the earliest moment even making the accused/Appellants in any way Ext. 1 which is the basis of report given by the P.W.-1 though at 8 P.M. caninno way in the instant case adversely affected the prosecution case. That way, the grounds so taken that the accused/Appellants were falsely implicated and the FIR being not transmitted to the Court in time do not help the defence. On behalf of the accused/Appellants a ground is taken that since there was previous grudge coming on between the family of Abdul Oath and the accused/Appellants, the accused Appellants had been falsely implicated Enmity is double

edged weapon and this view also can be taken that since as per the very case of the defence the accused/Appellants father was murdered in which Abdul Gani was the accused, it was just probable to have the vendetta, in the hands of the accused/Appellants thus murderous act is so committed. As regards the grounds so taken on behalf of the accused/Appellants that the independent witnesses so cited in the chargesheet are not examined in course of trial, the case diary with that of the statements of those witnesses named in the chargesheet u/s 161 of the Code of Criminal Procedure is cursorily looked into as regards the witnesses who are not examined though named in the chargesheet as witness and it is found that they were not on the point of occurrence but were hear say witnesses and that is why if the prosecution opted as not to examine some of them, on no count it can be said to be fatal to the prosecution case and non examination of those witnesses at no stretch of imagination can be said to be fatal. P.W.-2 Jakir Hussain, it transpires in his examination-in-chief has given details of the occurrence taking place being seen by him, he has also detailed the specific overtacts so committed by the accused/Appellants. He is also specific in saying that the place of occurrence was at such a short distance from police station which could have even been seen from Kachua police station. He is specific in saying that he was running to the police station after occurrence and on way he came across Jalaluddin and Muslemuddin P.W.-3 and 4, these witnesses at the time of cross-examination have given the distance between the place of occurrence to the police station saying it to be about 60 nals. By going through the evidence and the facts and circumstances of the case, it transpires that Kachua bazar was just nearby at a stone throw distance and in our considered opinion this witness has well stood the test of cross-examination. P.W.-3 Jalaluddin is specific in saying that he along with Muslem P.W.-4 reached the Kachua from Kampur bazar and left Kachua bazar for home taking No.1 Kachua goan road. According to him Axiul Gani (since deceased) and Jakir Hussian (P were also moving on the same road hardly at a distance of 10-12 nals and after a while he could see all the accused! Appellants coming from opposite direction and in furtherance of their common intention Abdul Jalil, Abdul Mannas and Abdul Hanif inflicting injuries on the person of Abdul Gani, as detailed also locating Jakir Hussain P.W.-2 running towards the police station and such a statement so coming from the mouth of material prosecution witness finds full support with that of the evidence of P.W.-2 and P.W. 4 who are also eye witnesses on material points particularly on the point of assault; on the point of overtacts committed by the accused Appellants also detailing the sequence of events finding symbolance in description with other eye witness. There is no major contradictions in his statement and he has also well stood the test of cross-examination. So is the case with P.W.-4 who is also in a way states the same as detailed by P.W.3 and according to him he had also an opportunity to identify the accused/Appellant committing an offence coming under the purview of Sections 302/34 of the IPC i.e. Appellants were found assaulting with dagger a sharp cutting weapon, the vital parts of the body of Abdul Gaul and that too the three accused/Appellants together repeating such fatal blows. The direct ocular

evidence of P.Ws-2 to P.W.-4 are in itself sufficient as to establish the guilt of the accused/Appellants. P.W.-5 is MasakatAli. He also claims to have the opportunity seeing the accused/Appellants fleeing with weapons in their hands and after reaching to the place of occurrence immediately thereafter this witness had an occasion to see Abdul Gani in a pool of blood and found dead at the place of occurrence. By looking into Doctor's evidence, it transpires that the Doctor had found 3 incised wounds on the person of Abdul Gani (since deceased) while conducting postmortem examination: one incised wound was so found on the neck 2" x 1" x 1 muscle vessels, trachea and on the soft tissues severed- Margins were found clean cut. Ante- mortem blood clots were found adherent to the wound. One incised wound on the chest transversely placed. Size 2" x 1" x muscle deep and one incised wound on the front of the abdomen in the umbilical region. Coils of small intestines were cut through the wound. Intestine perforated through and through in two pieces. Size 2" x 1" x peritoneal cavity transversely placed. In the opinion of the Doctor the death was due to shock and haemorrhage as a result of the injuries so sustained. In cross-examination Doctor is specific in saying that such injuries sustained were sufficient in the ordinary course as to cause the death. In this background it can well be said that over and above the 3 ocular witnesses with that the evidence of P.W.-6 being also corroborative, the prosecution has fully proved and substantiated the prosecution case.

7. Consequently, taking the evidences as a whole, we find that in course of trial the prosecution had succeeded as to bring home the charge so levelled against the accused/Appellants and they have rightly been convicted u/s 302/34 of the IPC. The impugned judgment of conviction and sentence thus so passed do not require any interference. Since the criminal appeal has no leg to stand, the same stands dismissed. The accused/Appellants are behind the bars, they are to serve the sentences and to pay the fine as directed by the learned Court below.

8. The criminal appeal is thus hereby dismissed.