
(2016) 06 GAU CK 0030
In the Gauhati High Court
Case No : Crl.A. No. 251 of 2013.

Riaz Uddin and Others - Appellants @HASH State of Assam

Date of Decision : 24-06-2016

Acts Referred:

Evidence Act, 1872 — Section 3, Section 8
Penal Code, 1860 (IPC) — Section 149, Section 302, Section 307

Citation : (2016) 6 GauLJ 230 : (2017) 1 GauLR 503 : (2016) 4 GauLT 1098

Hon'ble Judges : Arup Kumar Goswami and Rumi Kumari Phukan, JJ.

Bench : Division Bench

Advocate : Mr. S.S. Dey, Sr. Advocates, for the Appellants; Mr. K. Munir and Mr. K.A. Mazumdar, Addl. PP, for the Respondent

Final Decision : Dismissed

Judgement

Mrs. Rumi Kumari Phukan, J. - The present appeal has been preferred by the appellants under section 374 Cr.P.C. against the judgment and order dated 09.07.2013 passed by the learned Sessions Judge, Karimganj in Sessions Case No. 142/2012 convicting and sentencing the accused-appellants to suffer rigorous imprisonment for life and to pay fine of Rs. 10,000/- each for offences under Sections 302/149 IPC, in default, to undergo rigorous imprisonment for a further period of 1 (one) year. The accused appellants were also convicted and sentenced to under RI for a period of 7 (seven) years and also to pay a fine of Rs. 5,000/- each for offences u/s 307/149 IPC, in default, to suffer RI for a further period of 6 (six) months. Both the sentences were directed to run concurrently.

2. One Smt. Monowara Begum on 9.5.2012 lodged an FIR before the Karimganj P.S., in the following manner:

"To,

The Officer-in-Charge,

Karimganj Police Station,

Dated, the 9th May, 2012

(I, Smti Manowara Begum, wife of Late Samsul Haque, a resident of Vill- Kujub, PS & District- Karimganj, hereby file this ejahar with the PS after having it written as per my version).

Sir,

Humble submission is that having recently learnt about the misdeeds and misconduct of the head mistress of Akbarpur M.E.School of our village, the District Elementary Education Officer visited the School and found the head mistress Smti Sukla Chakraborty guilty and place her under suspension. After she was suspended, a few of her followers of the said village, whose names have been mentioned below, scolded my husband and others in filthy language and threatened them dire consequences. Taking the issue of the said head mistress, he had disputes with the accused persons named below. Out of that grudge, the accused persons having been armed with dao, dagger and some deadly weapons trespassed upon our homestead at about 10 pm. Yesterday i.e. on 08/05/2012, at the instigation of the said head mistress. At that time my husband Samsul Haque was going to shop when the accused persons confined him and with the intention of killing him, assaulted him in different parts of his body with sharp daos and daggers. Then my husband raised an alarm whereupon I myself and my husband's elder brother Faijul Haque came to save my husband. Then the accused persons assaulted in different parts of the body of "bhasur" (husband's elder brother) Faizul Haque with sharp dao and felled him, almost dead, by inflicting grievous, bleeding injuries upon him. At this I raised a hue and cry when the neighbouring people came and saved my husband and "bhasur" from the hands of the accused. Or else, they (accused) would have killed both of them. When the people poured in, the accused left the P.O., leaving behind a sharp dao used by them in the occurrence. We could recognise the accused persons in the glow of electric light. Finding the two injured persons struggling for life, the public immediately had an 108 ambulance called in and took them to Karimganj Civil Hospital. As the conditions of the injured worsened, the Karimganj Civil Hospital authority referred them to Silchar Medical College & Hospital right away. While undergoing treatment there, husband condition became serious at about 9/10 am on 9.5.2012 because of which the Silchar Medical College & Hospital released him for getting him treated elsewhere. Then we were taking husband to any one of the Nursing Homes when husband breathed his last on the way. It was found around 11 am then. In such a situation I opted to take the deceased to Karimganj PS. The filing of ejahar was delayed as I remained busy with my husband's treatment. On the other hand, my "bhasur" Faizul Haque is also struggling for life in the Silchar Medical College & Hospital. He may die at any time.

I, therefore, request you to investigate into the incident and take appropriate steps against the following accused and oblige.

Yours faithfully,

Sd/Manwara Begum

Name of the accused persons:

- (1) Riaj Uddin S/o Late Mosur Ali,
- (2) Anuharul Haque S/o Late Rojmul Ali
- (3) Joynal Uddin , S/o -do-
- (4) Rafique Ali, S/o Lt Bajid Ali
- (5) Kamal Uddin S/o -do-
- (6) Badrul Hoque S/o Kamal Uddin,
- (7) Abul Hussain S/o Tamiz Ali
- (8) Salim Hussian S/o -do-
- (9) Atab Uddin S/o Lt. Irfan Ali
- (10) Siddek Ali S/o Lt. Sorfan Ali

All are of vill- Kujob, PS & Dist-Karimganj."

3. On the basis of the aforesaid FIR the Police registered a case against the accused/appellants u/s 147/148/149/447/307/326/302 IPC and after due investigation submitted the charge sheet against the appellants. However, not finding sufficient evidence against other three FIR named accused, they were not sent up for trial and discharged accordingly.

4. The case was committed to the court of Sessions Judge, Karimganj and the learned Sessions Judge framed the charges under Section 447/148/149/302/325/307 IPC against all accused persons which was explained to the accused/appellants to which they pleaded not guilty and claimed to be tried.

5. In support of the case, the prosecution examined as many as 14 witnesses who were duly cross examined by the appellants. The appellants did not examine any witness in support of their defence.

6. On conclusion of the trial, the learned Sessions Judge, Karimganj held the accused/appellants guilty u/s 302/149 and 307/149 IPC and convicted the accused/appellants as mentioned above.

7. Challenging the aforesaid judgment and order the present appeal has been preferred on the ground that there being no finding as regards the common object on the part of the accused persons to commit an offence, the finding of the learned Sessions Judge is perverse and liable to be set aside. Certain other contentions have been raised which can be summarised as below :

"According to the FIR place of occurrence was in the house of Samsul Haque/the deceased, whereas as per the evidence place of occurrence is at a distance of 50 yards from the house of Samsul Haque.

There is serious discrepancy as regards the fact as to which hospital the injured Faizul Haque and Samsul Haque were taken after the incident.

The evidence of PW 2, Doctor reveals that after examination of Faizul Haque he was referred to Silchar Medical College but his report is silent as regards examination of other injured Samsul Haque, who was also stated to have been taken to said hospital.

Evidence of PW 14 reflects that he found lacerated injury on the person of the injured PW 3, Samsul caused by blunt object whereas PW 12 found incised injury on the person of Samsul caused by sharp object. Such inconsistency was not considered by the learned trial Court, which has vitiated the impugned judgment and order.

All the eye witnesses are related to each other and the learned court has failed to take note of the fact and there are certain facts which raised needle of suspicion towards the genuineness of the prosecution story.

The learned Sessions Judge failed to take note of the fact that the FIR was filed on 9.5.2012 at about 12.30 pm and therefore, how medical officer of Silchar Medical College could have examined the injured on the same very day at about 3.10 AM. There is no explanation as to how the case number is mentioned in the medical report since the FIR was registered much later than the examination of the injured.

There is no evidence to the effect that the deceased expired due to the assault inflicted by the accused/appellants and there are conflicting statements of eye witnesses as regards identification of accused persons.

The IO found M- exhibit one dao from the place of occurrence which was also seized and if that be so, the statement of eye witnesses that the injured was attacked and assaulted not only with dao but with other weapons is nothing but exaggeration and therefore, it will not be safe to base conviction on the basis of evidence of such witness.

The version of the witness i.e. PW 3 regarding identification of accused in the light of the torch and the seizure of the same by the IO from the place of occurrence is contradicted by the IO himself when he stated that he seized the torch light as produced by PW 3. Such an inconsistent version of PW 3 who claims to be an eye witness is not reliable.

Though injuries were collectively sufficient to cause death, but individually any of the injuries was not likely to cause death and as such, it cannot be definitely held that appellants had been harbouring the common object to cause murder of the deceased.

The prosecution failed to establish any nexus or conflict of interest between the appellants and the deceased so as to cause death of the deceased as well as injuries to other persons.

The evidence on record is not appreciated by the learned court in proper perspective of law and facts which has vitiated the findings the judgment and order, passed by the learned Sessions Judge."

Arguments Advanced By The Parties:

8. Referring to the grounds mentioned above, the learned counsel for the appellants, Mr. S.S. Dey has submitted that although there are so many eye witnesses to the occurrence but their evidence is not beyond doubt in view of the discrepancies so mentioned above. He contends that the presence of these eye witnesses in the place of occurrence and the identification of the accused persons is under the shadow of doubt in the given circumstances. Pointing towards the discrepancies in evidence it has been argued that according to some of the witnesses they could identify the accused on the road side light but the P.W.3 has identified the accused on the focus of the torch light and there is discrepancy as regards recovery of such torch light also. Question has been raised if the accused could be identified by road side light then where is the necessity for using the torch light?

9. Further contention raised by the learned counsel for the appellants is that the I.O. had seized only a dao and no more weapons, which itself nullifies the prosecution story that the deceased was assaulted by various other weapons as has been mentioned by the witnesses. Thus, according to the learned counsel for the appellant prosecution has not been able to prove the complicity of the accused persons with the offence beyond all reasonable doubt and accordingly they are liable to be acquitted of the charges.

10. Per contra, the learned Additional Public Prosecutor, Mr. K. Munir has vehemently argued that such contention of the appellants do not hold good and on a boarder appreciation of all evidence on record there is nothing to raise doubt about the complicity of the accused appellants. It has been pointed out that in the given case defence has no specific plea and except giving some mere suggestions the defence side has failed to demolish the evidence of those witnesses in their cross examination. Although I.O. has proved some omission on the part of few witnesses as regards the facts, but such an omission does not necessarily go to the root of the case and does not amount to contradiction so as to discredit the credibility of any of those witnesses. As regards the other contentions of the appellants" side that have been canvassed before this Court are not so material to destroy the credibility of prosecution case which is otherwise proved by the overwhelming evidence of several eye witnesses who can no way be termed as an interested witness. Thus it has been submitted that the learned trial Court has rightly convicted the accused persons and it needs no interference.

11. We have given our anxious consideration to the submissions of the learned counsel for both the parties and considered the attending facts and circumstances so appeared in this case. To evaluate the submissions made above, let us have a look on the evidence on record.

Evidence Of Informant And Her Family Members

12. So far the factual matrix goes it reflects that as per the evidence of PW 1 Monowara Begum (wife of deceased Samsul Hoque) and PW 2 Dilowara Begum (daughter of deceased Samsul Hoque), on the fateful day at about 9.45 pm, accused Rias, Jainul, Rafique, went to their house and called Samsul Hoque and accordingly Samsul Hoque went out with them while PW 2 followed her father Samsul. Then PW 2 saw that as soon as they went out all accused persons started assaulting Samsul with dao and huza (pointed bamboo used for taking bundle of paddy). Hearing hue and cry of PW 2, wife of Samsul PW 1 went out followed by the PW 3 Foizul Hoque (brother-in-law of PW 1). When all three of them tried to rescue Samsul from the assault made by those persons, then all accused persons began to assault PW 3 also. As a result of the same PW 3 fell down sustaining severe cut injuries on his waist line, feet, left hand and other parts of the body and his brother-in-law Samsul also fell down at the place of occurrence sustaining severe injuries on his persons. Their evidence is corroborating with each other. PW 3 also stated in his evidence that when he rushed to the place of occurrence he happened to see the accused persons on the focus of the torch light. Further all of these three witnesses have also stated that nearby people arrived immediately at the time of occurrence such as Gofer (PW 10) , Malik, Malik Uddin (PW 8), Kamal Uddin (PW 4) and all of them took both the injured Samsuddin and Foizul to the hospital for treatment.

13. PW 1 and 2 have stated that after seeing the occurrence. PW 1 became senseless and on the next very day the FIR was filed. PW 1 has clarified in her cross examination that the Ejahar was written by some other person but she cannot say who wrote the same, and the incident took place on the Sutarkandi main road, near to their house which is at a distance about 50 feet. This PW 1 further stated in her cross examination that at the time of alleged occurrence the incident was seen by the nearby people who were in their shops and the market known as "Sufiganj Bazar" and there is a shop of one Moinuddin, just opposite side of the place of occurrence.

Evidence Of Eye Witnesses

14. It is to be noted that the evidence of PWs 1, 2 and 3 has been fully corroborated by the other witnesses like PW 4 Kamal Uddin, PW 5 Nejam Uddin, PW 10 Gofur. The said witnesses were present in the shop of PW 4 at the Sufiganj Market and hearing alarm on the road side, all three of them rushed outside towards the road and then saw that all the accused persons armed with dao and huza had assaulted Samsul severely as a result of which Samsul fell down and though PW 3 tried to rescue Samsul but he was also assaulted by the

accused persons and as a result PW 3 also fell down sustaining severe injuries on his person. At that time one Autorickshaw reached the place of occurrence, seeing which the accused persons fled away and they stopped the Auto and managed to lift Foizul (PW 3) by the Auto and keep him near the body of Samsul. Thereafter both the injured were taken by a 108 vehicle to the Karimganj Civil Hospital. However, both the injured referred to Silchar Medical College & Hospital and PW 4 and PW 10 accompanied the injured were to the Hospital but on the next day Samsul died and his dead body was brought back to Karimganj and post mortem was done in Karimganj Civil Hospital.

15. These three eye witnesses have given clear description of the occurrence without any material omission so as to discredit their evidence. It is to be noted that in their cross examination the above three witnesses had stated that there are street lights surrounding the place of occurrence and shops of all the witnesses and houses of some other persons also situated near the place of occurrence. It is to be noted that no any effective cross examination was made to discredit the authenticity of the evidence or to suggest anything about false implication of the accused persons by these witnesses or to show any hostile relation between the witnesses and that of the accused persons. The testimony of all above witnesses are direct evidence and they are independent witnesses and no way related to deceased or informants. Their evidence is convincing, inspiring confidence as to its truthfulness.

16. So far as criminal cases are concerned, the evidence of ocular witness if accepted is sufficient to warrant conviction but the Court as a measure of caution may seek some confirming circumstances. Ordinarily the evidence of truthful eye witness is sufficient without anything more to warrant a conviction and cannot be made to depend for its acceptance on the truthfulness of other evidence on record. Where the witnesses are not interested, and there is no motive for false implication, strong grounds are needed to disbelieve them. Again question of credibility of a witness is primarily to be decided as to how a witness has faced the cross examination and what impression is created by his evidence taken in the context of other facts of the case.

17. Further, in the given case as we found that the PW 3 himself is a victim/injured and such evidence of an injured, which does not suffer from any sort of material discrepancy, omission and contradiction etc. cannot be detracted from its credibility. It is a proposition of law that a very strong and convincing reason is required to discard such evidence. Such proposition is basically based upon the hypothesis that nobody will falsely implicate another person by leaving the real culprit go scot free. The evidence of PW 3 herein is fully corroborated by the above mentioned independent eye witnesses (PW 4, PW 5 and PW 10) and two of his relatives (PW 1 and PW 2).

Evidence Of Other Witnesses:

As referred by the above eye witnesses the aforesaid Autodriver/PW 8 Malik

Uddin has lent support to the testimony of above witnesses that on the day of occurrence at about 10.30 pm while he was driving his Auto towards Sufiganj Bazar, he was stopped by PW 4 and PW 5 and asked for his help to take the injured persons in his auto. Accordingly he took injured Faizul in his auto to a distance of about 100 feet where another injured Samsul was lying down and thereafter both the injured were taken by 108 vehicle. The evidence of PW 7 Islam Uddin and PW 9 Jubel Ahmed has also lent support to the facts and circumstances of the case. They came out from their house hearing hue and cry outside went to the place of occurrence and then they found Samsul and Foijul lying injured on the road. By this time 108 vehicle came and took both the injured to the hospital and both these witnesses accompanied the other witnesses i.e. PW 4, PW 5 and PW 10. Their evidence is similar to that of other witnesses in respect of treatment of injured persons and about death of Samsul and they also asserted the fact that they found PW 1 and PW 2 at the place of occurrence.

The evidence of the aforesaid witnesses makes the chain of facts complete without any scope to raise doubt over the authenticity of the eye witnesses and they were all neutral witnesses.

Evidence Of Medical Officer:

Dr. Lepi Deb/PW 12 had also corroborated about the factum of injury so sustained by PW 3. He examined the PW 3 at about 10.50 PM on 8.5.2012 Karimganj Civil Hospital and found the following injuries on the person of PW 3.

- (i) Incised wounds in the right parietal region about 3" x ?" x bone deep.
- (ii) Incised wounds in the left parietal region about 3" x 2" x 1".
- (iii) Lacerated injury over chin about 1" x ? "
- (iv) Multiple lacerated and incised wounds over left hand 3 in numbers about 2" x ?" x ?".

All above injuries are caused by sharp objects. Due to such multiple injury PW 3 was referred to Silchar Medical College & Hospital.

18. As referred by the Karimganj Civil Hospital the above injured/PW 3 Foijul was examined by PW 14 Dr. R.S.Das of Silchar Medical College & Hospital (in short SMCH), on 9.5.2012 at about 3.10 am and found the following injuries.

- (i) Lacerated wound of 4 cm x 0.5 cm x 0.5 cm over the left hand index finger which was simple inflicted by blunt object and was fresh.
- (ii) Another lacerated wound 6 cm x 1 cm x muscle deep over left hand palmer aspect, which is simple and inflicted by blunt object and was free.
- (iii) Another lacerated wound of 3 cm x 2 cm over dorsum of left index finger, which is simple inflicted by blunt weapon and was fresh.

(iv) There were two stitched wounds. One of 5 cm length and another of 6 length over the scalp which is grievous, inflicted by blunt weapon and was fresh.

(v) Stiched wounds 2" in length over the mendidle, which is simple, blunt and was fresh. It has been submitted by the PW 14 that the injured was brought by the guardian, not on police requisition and the patient was admitted in their hospital. The witness also produced all the relevant documents pertaining to the treatment and admission of the said patient. The evidence of both the medical officers has also supported the factum of injury so sustained by the PW 3 on the fateful day. In the second medical report the time of examination has been mentioned as the afternoon of 9.5.2012 which is obvious as the injured was first examined at Karimganj Civil Hospital at night about 10.50 PM, thereafter he was taken to Silchar Medical College & Hospital. The contention of the learned counsel for the appellants is that two different sorts of injuries were found by two different medical officers who happened to examine the injured Samsul. It is not enough to discard the prosecution case. The meaning of the word incise and lacerate are same and it denotes cut injury with sharp weapon. The opinion of the Medical Officer/PW 14 about blunt object may not ipso facto contradict his own finding that it is a cut injury. We found nothing to discard the medical evidence accordingly.

19. The other medical officer/Dr. Nazimuddin Ahmed/PW 6 of Karimganj Civil Hospital has testified about the post mortem (vide Ext. 5 P M Report) made by him on the dead body of Samsul Ali on 9.5.2012 and he found the following injuries on his body:

(i) Stitched wounds right parietal region 4" long.

(ii) Abrasion about 4" long x ?" wide over epigastria.

(iii) 1 penetrating wound right iliac fosse ? "long 3" deep and death was due to injuries sustained and caused by sharp weapons of 4" long.

Evidence Of Investigating Officer:

20. Shri Aton Singha/PW 13, the investigating officer in his evidence has stated all about the investigation he made. He had drawn the sketch map vide Ext. 11, seized the dao found at the place of occurrence, vide Ext. 4, seized the wearing apparels of the deceased person vide Ext.6, seized the torch light vide Ext.3 and collected the medical examination report. After conclusion of the investigation he submitted charge-sheet, Ext.12 against all accused persons. In his cross examination it has been stated that as per the sketch map dwelling house of the informant is at some distance from the place of occurrence i.e. Sutarkandi road but the distance is not mentioned. The sketch map also reveals that there is a shop of one Moinuddin just opposite that place of occurrence but he did not examine the said Moinuddin.

21. In cross examination I/O has proved the following contradictions of the witnesses.

"PW 1 Monowara Begum did not state before him that she turned unconscious after the occurrence and she came to know that her husband and brother-in-law has been sent for medical treatment and her husband died, only after regaining her sense. She also did not state before him that her husband was a member of the Managing Committee of Akbarpur M.E.School and same was not mentioned in the FIR.

Similarly PW 2 did not state that seeing the occurrence PW 1 became senseless and that Gofur, Malik, Malik Uddin, Kamal Uddin had taken away her father and uncle to Karimganj Civil Hospital and Faijul Hoque was under treatment for 9/10 days. She also did not state that accused Riaj, Joinul, Anowar, Rofique called her father from their house at night 9.45 pm and that when her father went out, accused persons caught hold of her father and took away to nearby a Pan Shop?

Again the PW 3 did not state before him that he came to know from his brother Samsul (since deceased) about the allegation of corruption and abusing, rebuking of deceased by the accused persons in a meeting and about the fact that they came to Karimganj on the following day to lodge an FIR. He also did not state before him about the assault made by accused with sword.

PW 4 Kamal Uddin did not state before him anything about meeting, resolution against corruption of Samsul Hoque taking part in the meeting and his protest in the meeting, resolution regarding transfer of Headmistress, meeting of Headmistress with him with a request for withdrawal of suspension order, meeting of accused persons with the Headmistress for helping of withdrawal of suspension order and seeing some of the accused abusing in the name of Samsul Hoque in the Sufiganj Market with a dire consequence of Samsul Hoque. He also did not state about taking of both injured persons to the hospital and about death of Samsul.

PW 5 did not state before him that the accused Riaz Uddin, chasing from back side, assaulted Foizul by throwing a dao as a result of which Foizul fell down, nor did he state anything about informing 108 vehicle and the fact that the accused fled away seeing the Auto.

PW 9 did not state before him that he found the PW 1 and PW 2 at the place of occurrence. On the other hand the PW 10 did not state before him about seizure of wearing apparels of deceased nor about the factum of his presence at the time of post mortem examination. He also made no mention about finding of PW 1 and PW 2 at the place of occurrence and about the seizure of torch light."

22. From the evidence of I.O., as mentioned above, it is found that apart from above omission on the part of some of the witnesses on some smaller issue, the defence has failed to prove any sort of material contradiction on the part of the any of those witnesses to disprove the factum that they never saw the occurrence. Such omission on the part of the witnesses did not amount to contradiction and do not necessarily goes to the root of the matter. The genesis of prosecution story that all the above mentioned witnesses had seen the

occurrence, remains unrebutted and defence could not hammer any of the material aspect of the matter so as to discredit the evidence on record. From the evidence of the PW 1 to that of PW 11 (except medical officer) the chain of facts from taking away the deceased from his house, to the assault made to him by accused persons has been proved without leaving any scope to doubt about the complicity of the accused persons.

23. The contention of the appellant about seizure of one dao and torch is of little consequence. As per the findings of all the witnesses only one dao was found lying at the place of occurrence and it was seized. It is not a case of prosecution that accused appellant left all weapon of offence at the place of occurrence and the IO has recovered only one weapon. Regarding using of torch by PW 3 and his statement that he could saw the accused in the light of torch is not at all doubtful one in the given circumstances because the PW 3 who happens to be the brother of deceased suddenly went out at such night hours about 10 PM on hearing hulla outside and carrying of torch light at such night hours is very much natural. Though he has categorically stated that he has seen the accused in the light of torch (because he might have used the torch) but other witnesses have also stated that they could identify the accused persons on the roadside light as it was a bazar area and the shops were open till then.

24. Another contention of the learned counsel that all eye witnesses are related to each other is not at all proved because except PW 1 to PW 3 all other witnesses were no way related to the deceased as well as the informant, nor interested witness. The witness, who is neutral one and is only possible eye witness in the circumstances of a case, cannot be said to be an interested witness. As we found the above mentioned witnesses i.e. PW 4, PW 5 and PW 10 are the shop owners nearby the place of occurrence and their presence at the place of occurrence is very much natural and they are the only possible witness to the incident. Similar is the status of other witnesses PW 7, PW 8 and PW 9.

25. The other contentions raised by the appellants that the injured was examined at Silchar Medical College & Hospital in the afternoon at about 3.10 PM while the FIR received at 12.30 PM in the Police Station is a doubtful matter, cannot be sustained in view of the observations made above. Although the witnesses had stated about taking of the deceased at Karimganj Civil Hospital but no medical report is submitted in this regard but however, his post mortem examination was made in the said hospital.

Corrolary Of Findigns:

Here in the case the FIR was written by some other person, not by the informant herself. It is in evidence on record that the husband of the informant and her brother-in-law was brutally assaulted by a group of persons (appellants) in her presence and she turned unconscious seeing the assault and on the next day morning she came to know about the death of her husband who was taken to different districts for treatment. Her brother-in-law/PW 3 was in critically injured

condition lying and was in the hospital and in such situation writing of FIR by herself in exact details was not possible. Accordingly the FIR was written by other person and in such backdrop, proper description of the matter may not be entered into the FIR. On that account discrepancy so occurred in the evidence of the informant and the FIR cannot be regarded as doubtful matter, as has been contended by the learned counsel for the appellants. Further it has been sufficiently brought on evidence that the place of occurrence is about 30/50 feet away from the house of the informant and nearby the shop of the PW 4 in the Sufiganj Market and the deceased was called from his house by some of accused appellants to the place of occurrence and thereafter he was assaulted resulting in his death. The conjoint assault upon the deceased by the accused appellants indicates their common object to commit the crime which is enough to make them liable under Section 149 IPC.

The evidence of PW 3 and PW 4 indicates certain background prior to the incident between the deceased and the accused persons which might have prompted the accused persons to commit the crime (the motive behind) but said portion of their evidence cannot be taken into account, in view of the fact that such statement was not made before the I.O. in course of investigation. However, leaving apart this portion of evidence, there is overwhelming evidence on record to prove the complicity of the accused/appellants.

Motive plays an important role and become compelling force to commit a crime and therefore motive behind the crime is a relevant factor. In a case where there is clear proof of motive of commission of a crime it added support to the findings of the Court but however, existence of motive is not sine qua non of the success of prosecution case where the participation of accused in crime was established by evidence of eye witness, the evidence of motive pales into insignificance and could not be a ground to justify acquittal.

In the present case, from the totality of the evidence on record we found that the prosecution has been able to prove the charge U/S 302/149 IPC and 307/149 IPC beyond all reasonable doubt and the accused appellants have been rightly convicted by the learned Sessions Judge. Accordingly the impugned judgment and order dated 9.7.2013 in Sessions Case No.142/2012 passed by the learned Sessions Judge, Karimganj is hereby upheld.

Consequently, the appeal stands dismissed.

Send down the LCRs forthwith with a copy of the judgment.