
(2014) 06 GAU CK 0028
In the Gauhati High Court
Case No : Crl. Appeal No. 82 of 2009

Subrata Kar

APPELLANT

Vs

Ranjit Kumar Shome

RESPONDENT

Date of Decision : 20-06-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 208, 209, 225, 226, 227

Evidence Act, 1872 — Section 157

Penal Code, 1860 (IPC) — Section 109, 147, 302, 323, 34

Citation : (2015) 1 GLD 437 : (2014) 4 GLT 279

Hon'ble Judges : Prasanta Kumar Saikia, J; Brojendra Prasad Katakey, J

Bench : Division Bench

Advocate : N. Dhar, Advocate for the Appellant; R.P. Kakoti, Sr. Advocate, Inam Uddin, A. Chamuah, Amicus Curiae and Z. Kamar, P.P, Advocate for the Respondent

Judgement

Prasanta Kumar Saikia, J.—This appeal is a tragic tale of two young students meeting their violent death while trying to enforce their demand for ouster of the Principal of their school whom they believed to have been involved in some illegal/immoral activities. This is also a heartbreaking tale of someone who had to wait endlessly for decades running from pillar to post in trying to bring the culprits to book since they brought abrupt end to someone who were near and dear to them. Worse still, it is also a classic but an awful account of criminal negligence of enormous proportion of a Government of the people, by the people, for the people, in responding to a disastrous incident which silenced forever two voices of countless voiceless. The preface to incident in question having been noticed, let us see how the case which has a chequered history landed in the highest Court of the State after several decades of the incident which extinguished the lives of two young students in a most unfortunate circumstances.

2. Accused Manabendra Choudhury was the Principal of Kamkrishna Nagar Bidya Pyth, Ramkrishna Nagar, Karimganj. Over a long period of time, his various

alleged immortal/illegal activities annoyed and angered the student community in particular and teachers/public in general. The student community, therefore, decided to stage a Dharna in the school demanding ouster of the Principal of the school on 18.11.1982.

3. The school resumed on 18.11.1982 after Puja vacation. On that day, the students of the school staged a Dharna (sit in strike) in front of office of the Principal. The said agitation was led by Sagar Dutta and Dipak Sarma, since deceased. In course of time, Incharge, Ramkrishna Nagar Police Station out post (now prescribed to P.S.), Sheikh Mahibulla came to the school and entered the room of the Principal. He came to such place with some police personnel with batons in their hands.

4. Some time thereafter, at about 1:30 p.m., Sri Ranjit Kumar Shorn, SDC, Ramkrishna Nagar also came and held discussion with Principal and I/C Ramkrishna Nagar P.S., in the room of the Principal. Sub Inspector Rabindra Sen (now deceased) of Ratabari P.S., joined them at about 1:30 p.m. He came to such place with some armed police. For convenience of discussion, Sri Ranjit Kumar Shorn, Sheikh Mahibulla and Manabendra Choudhury would be referred to as A-1, A-2 and A-3 respectively.

5. While as A-1, A-2 and A-3 and one Rabindra Sen were having discussion in the office room of the Principal, girl students who sat in Dharna in front of the office room of the Principal were asked to disperse which was however, ignored by the girl students for which they were dragged to the room of the Principal. Soon thereafter, there was huge chaos in the room of the Principal.

6. Hearing hue and cry, male students, closer to the room of the Principal, wanted to know what exactly was going on inside the room of the Principal. They did so by peeping through one of the windows of the office of the Principal of Ramakrishna Nagar Bidya Pyth. As soon as Dipak Sarma peeped into the room through one of windows thereof, Mahibulla (A-2) shot at Dipak Sarma which hit him on his head for which he died on the spot.

7. Such abrupt turn of events made everything topsy-turvy for which students, present there, started running helter and skelter. But the incident did not end there. Even thereafter, on the instigation of Principal, the accused Mahibulla and some other police personnel started shooting at Sagar Dutta which severely injured him.

8. He succumbed to such injuries same day in the late afternoon, and that too, without receiving any treatment. With the above allegations, in course of time, a complaint was lodged before the Chief Judicial Magistrate (in Short CJM, Karimganj) Karimganj by one Sudhangshu Bimal Kar.

9. In the course of the proceeding, Learned CJM, Karimganj found it necessary to refer the matter the Government to issue a certificate if alleged offences were committed in course of official duties, assigned to the persons, arrayed as

accused persons in CR No. 2491/1982, vide order date 16.11.85, passed in CR No. 2491/1982. Such order was challenged in Criminal Revision No. 15(1) 1986 and learned Session Judge, Karimganj by his order dated 25.10.90, passed in Criminal Revision No. 15(1)/1986 quashed the order and referred the matter to the CJM, Karimganj for disposal in accordance with law.

10. Thereafter, learned CJM proceed with the case and came to the conclusion that accused persons prima facie committed the offence under Section 302/ 34 IPC and accordingly, learned CJM committed the case to the court of Sessions at Karimganj for disposal in accordance with law. In the due course, the matter was transferred to the file of Addl. Sessions Judge, FTC, Karimganj for disposal.

11. On receipt of the case on commitment and on hearing the parties, the learned Sessions Judge framed charge under Section 302/ 34 IPC against the accused person namely, Ranjit Kr. Shome, Sheikh Mahibulla and Sri Manabendra Choudhury. Alternatively, he also framed a charge under Section 302/ 109 IPC as well and charges, so framed on being read over and explained to the accused persons, they pleaded not guilty and claimed to be tried.

12. During the course of trial, the prosecution has examined as many as 8 witnesses. Statements of the accused persons under Section 313 Cr.P.C., were also recorded. The accused plea was of total denial. They, however, declined to adduce any evidence of their own when they were called upon to adduce their evidence.

13. On the conclusion of trial and on hearing the arguments advanced by the learned counsel for the parties, the learned Sessions Judge came to the conclusion that the prosecution could not make out the charges, leveled against the accused persons and accordingly, he acquitted all the accused persons of offences, they were charged with.

14. Being aggrieved by and dissatisfied with, the complainant has preferred this appeal against the judgment rendered by the trial court on 25.02.2009 in Sessions Case No. 11/2007. It has been submitted by the learned counsel for the appellant that despite there being specific, clear, cogent and consistent evidence on record establishing charges against all the accused persons, the trial Court acquitted them of all the offences, they were charged with.

15. In that connection, it has been stated that the evidence of PWs aforesaid clearly shows that on 18.11.1982, Siekh Mahibulla (A-2) fired shots at Dipak Sarma which occasioned the death of Dipak Sarma then and there. There is equally convincing evidence to show that Siekh Mahibulla (A-2) fired at Sagar Dutta on the instigation of Manabendra Choudhury (A-3) which gravely injured Sagar Dutta and it led to his death on the same day in the late afternoon.

16. According to the learned counsel for the appellants Mr. N. Dhar, although all the PWs were subjected to detailed cross-examination on different aspects of the matter, under consideration, yet, such cross-examination could not show any

infirmity in the testimony of prime prosecution witnesses. He, therefore, urges this court to set aside the judgment, rendered by trial court and also to convict the accused/respondents of offences they were charged with.

17. Learned counsel appearing for the respondent No. 1 and 2 and learned Amicus Curiae appearing for respondent No. 3 while supporting the judgment of the Trial Court, had questioned the prosecution case on various grounds. Since they questioned the prosecution case on various grounds, we propose to discuss all those contentions in appropriate place. However, their submissions, in long and short, was that on acquitting the respondents, trial court committed no wrong, whatsoever, therefore, they urge this court to dismiss the appeal.

18. Above being the arguments, advanced from the side of the appellant and the respondents, let us see whose contention stand to reason in view of the materials on record. But before we proceed further, we feel it necessary to have a look the evidence on record and the evidence of Doctor, who conducted the autopsy on the cadaver of helpless boys is first taken up for consideration. He was Dr. Shyama Saikia and was examined as PW 8.

19. According to him, on 19.11.1992, he was posted at Hailakandi as Medical & Health Officer at Civil Hospital, Hailakandi. On that day, on police requisition in connection with Ratabari P.S. U.D. Case No. Nil of 1982, he performed the post mortem examination on the dead body of Sagar Dutta, male, aged about 19 years and found the following injuries:-

"(1) Right thigh; one round wound about 3/4th in diameter in mid-thigh posteriorly with inverted edge, skin surrounding blackened and tattooed.

(2) One lacerated wound 2.5 c.m. with inverted edge on the medial aspect of junction of upper and middle 1/3rd of right thigh. Blood clots seen around the injuries.

(3) Left thigh; one penetrating round wound about 3/4th c.m. in diameter 10 c.m. below the left anterior superior iliac spine on the left thigh, skin surrounding blackened and tattooed.

(4) One abrasion 5 c.m. skin deep over the left wrist joint on the external side".

20. On the same day, in connection with Ratabari P.S. U.D. Case No. Nil of 1982, he also examined the body of one Dipak Sarma, male, aged 20 years old and found the following injuries:-

"(1) one round wound 3/4th c.m. in diameter with inverted edges 3 c.m. away of the mouth; skin surrounding the wound is blackening and tattooed.

(2) One corresponding wound with lacerated edge 7.5 c.m. x 5 c.m. on the right side of the neck, just behind the angle of the mandible".

The doctor also opined that the injuries were caused by bullet and death was caused due to shock and hemorrhage from injuries".

21. The defence did not dispute the findings of the Doctor vis-a-vis number of wound(s), nature thereof or cause of death of those two young boys. Being so, it needs to be held that (a) the shock and hemorrhage caused by injuries occasioned the death of the aforesaid boys, (b) the injury/injuries aforesaid were caused by bullets, (c) the shots which caused the death of the deceased were fired from very close range and (d) the death was homicidal in nature.

22. So situated, let us see the evidence of other witnesses who claimed to have seen the incident under consideration. They are PW 1, PW 2, PW 3, PW 4, PW 5, PW 6 and PW 7. According to PW 1, Sri Haripadu Choudhury, during the relevant time, he was studying in Ram Krishna Vidyapith, Ram Krishnanagar. Some time before the incident, two students from the school were found copying during the promotional examination from Class XI to Class XII. They were Chandra Kanta Sinha and a girl student. Though the girl student was subsequently given promotion to the next higher class, such benefit was, however, denied to Chandra Kanta Sinha. It was alleged that the girl student was so promoted to higher class since the Principal of the school (A-3) had some illicit relationships with her. Owing to such conduct of the Principal, the student community wanted the ouster of A-3 from the post of Principal of the School and for that purpose, on 18.11.1982, the student staged a "Dharna" by squatting in front of the office of the Principal. The girl students sat in front row whereas the boys sat behind them.

23. PW-1 further deposed that at about 12 noon, one Sri Ranjit Shome (A-1), the then SDC, Ram Krishnanagar, came to the school and went straight to the office room of the Principal. Sometime later, he left such place. Half an hour thereafter, he again came to the school along with A-2 and entered into the room of the Principal. Before entering into the room of the Principal, he told the agitated students that he would settle the matter. Some police personnel also accompanied by the SDC. Thereafter, at about 2.30 pm, Rabindra Sen, S.I. Ratabari P.S. along with police force arrived at the school. At about 3.15/3.30 p.m., the girl students staging "Dharna" were called to office room of the Principal for discussion over the matter. Sometime thereafter, the girl students, who were called to office room of the Principal, raised hue and cry. They were also seen rushing out from the room of the Principal shouting. The commotion inside the room of the Principal forced boy students to peep through the window of the room of the Principal.

24. According to PW-1, deceased Dipak too peeped into the room aforementioned through one of the windows. The moment Dipak peeped into the room of the Principal through one of the windows, he was shot on his right temporal region. Being so hit, Dipak fell down on the ground. Owing to such abrupt and violent turn of events, the students started running helter and skelter. Sagar Dutta too was running for cover. At that moment, A-3 (Manebendra Choudhary) ordered to shoot Sagar Dutta blaming him to be the person responsible for aforesaid incident. Immediately thereafter, according to PW-1, several shots

were fired at Sagar Dutta which hit him for which he fell down on the ground heavily injured. PW 1 along with other persons, namely, Amarendra Chakraborty, Sri Bijit Deb Sen, Dilip Dutta and Hiranmay Das, all teachers, took Sagar Dutta to the class room. Though Sagar Dutta was alive for some time and although the request was made to take him to hospital for immediate treatment but nothing had been done for providing him necessary treatment for which he died about two and a half hour after being so shot.

25. According to this witness, one Sri Sudhangshu Bimal Kar, who was the "Mesamasoi" of Sagar Dutta (deceased), lodged a complaint before the Court. In his cross-examination, he, however, admitted that he did not know who opened the fire on the ill fated boys. He also did not know who ordered the armed personnel to fire at the student. He further admitted that the accused Mahibulla Sheikh came to the place of occurrence with lathi only.

26. PW 2, Sri Aran Choudhury, deposes that on the fateful day, a "Dharna" was staged in the aforesaid Vidyapyth and such "Dharna" was staged to oust the Principle from his position. On 18.11.1982, at about 1.00 pm, A-1 and A-2 with some armed police personnel came to the room of the Principal and had some discussions with the Principal. Thereafter, at about 1.00/1.30 p.m. Rabindra Sen, S.I. along with armed police came to the school and entered into the room of the Principal. At about 1.45 p.m. Principal (A-3) and police personnel asked the girl students to disperse and when they refused to do so, they were taken in to the room of the Principal by applying force for which the girl students raised hue and cry. Thereafter, they came out of the room rushing and shouting. Owing to such hue and cry, Dipak Sarma peeped in to the office room of Principal through one of the windows. However, the moments Dipak Sarma peeped in to room through window, A-2 fired shot at Dipak Sarma for which he fell down on the ground and died.

27. When the commotion in the school was still going on, according to PW-2, A-3 suddenly ordered to shot at Sagar Dutta terming him as scoundrel. Soon thereafter, several shots were fired from the room of the Principal, some of which hit Sagar Dutta for which he fell down on the ground and died some time thereafter. In his cross examination, he had admitted that only Dipak Sarma peeped through the window of the room of the Principal but many other students were also present at such place at that point of time. The suggestion that Mahibulla Sheikh did not shot at Dipak and the suggestion that PW 2 did not witness in the incident were denied by him.

28. PW 3 is Shri Bijoy Das. He deposes that on the fateful day, all the students including Sagar Dutta, Dipak Sarma staged a "Dharna" in front of the office of the Principal of Ram Krishna Vidyapith, Ram Krishnanagar, seeking ouster of the Principal of such school. At about 12.00 a.m. accused Ranjit Shorn (A-1), the SDC, came to the school and had some discussions with the Principal and left the school sometime thereafter. Sometime later, A-2 came there along with some police personnel armed with lathi. At about 1.30 p.m. A-1 again came there and

engaged in a discussion with the Principal. At about 3.00 p.m. A-1 and A-2 told the girl students to disperse from such place. However, such demand was ignored for which the girl students were dragged into the room of the Principal. Soon thereafter, there was commotion in the office room of the Principal. Dipak peeped through one of the windows to see what was going on inside the room of the Principal. Immediately A-2 took a gun from armed police personnel and fired at Dipak which hit him on his forehead.

29. PW-3 further deposed that Dipak fell down on the ground and died instantaneously. Seeing all these, all the students including Sagar Dutta started running hither and thither. However, the Principal shouted at Sagar Dutta terming him as scoundrel and ordered the police personnel present in his office room to shot at Sagar Dutta. Then the police personnel fired shots at Sugar Dutta hitting him on various parts of his body for which he fell down on the ground, who was, however, alive for some time. PW 3 brought some milk and water from the nearby shop and fed him. At about 3.30 p.m. a nurse, Jyotshna by name, came there to enquire about her grandson (who read in such school during the time under consideration). PW 3 repeatedly requested Mahibullah Sk and Ranjit Shorn (A-1 and A-2) to bring a Doctor to attend the victim. But they refused to do so for which Sagar Dutta died after some time. When the incident was over, police took the dead bodies to a truck. Seeing it, the A-3 pronounced loudly that the boys who tormented him were finished. In his cross examination, he confirms that the gun shots were fired from the office room of the Principal. The suggestion that Mahibulla Seikh did not snatch any Riffle from the police personnel was denied by PW 3.

30. PW 4 is Alak Choudhury. In his evidence, he deposes that on the fateful day, at about 11.00/11.30 a.m., A-1 came to the school and engaged in some discussions with the Principal over the ongoing "Dharna" and left the school after sometime. In between 1.30 a.m./2.20 p.m., Mahibulla Sheikh (A-2) with some police personnel came to school, entered into the room of the Principal and held some parlays with A-3. In the meantime, accused Rabindra Sen too came there with armed police personnel. At about 2.30 p.m. the accused Ranjit Shorn, (A-1) came to the school, had some discussions with the Principal in his room. Some time thereafter, the accused persons dragged the girl students to the office room of the Principal and started beating them for which the girl students raised hue and cry and came out of the room of the Principal shouting. In the meantime, Dipak peeped through the window to see what was going on inside the room of the principal. When he so peeped through the window, a bullet hit him on his head for which he fell down on the ground and died on the spot itself.

31. Owing to such incident, according to PW-4, students including Sagar started to run in all the directions for cover. PW 4 then heard the Principal urging the police personnel in the room of the Principal to shot at Sagar Dutta terming him as scoundrel. Soon thereafter, Sagar Dutta was shot at from inside the principal's room for which he fell down on the ground. He died of the wounds

same day at about 6.00/6.30 p.m. In his cross examination, the suggestion that accused persons did not drag the girl students into the room of the principal was denied by him. He, however, admitted that he did not know who fired the shots from inside the room of the Principal.

32. PW 5, Sri Bijit Kr. Dey Sen, a teacher, deposes that on the fateful day, the student of the aforesaid school staged a "Dharna" in front of the room of the Principal. At about 11/11.30 a.m. A-1 came to the school and met the Principal in his room. He had some discussions with the Principal. In the meantime, A-2 came there with some police personnel and threatened Sagar by saying that he would finish him and others on that day. Thereafter, at about 12/12.30 a.m. Rabindra Sen, Second Officer of Ratabari P.S., came there with armed police men and entered into the room of the Principal, who though left the place, however, has returned to such place at about 2.30 p.m. and entered into the room of the Principal. Sometime thereafter, all the accused persons started dragging the girl students into the room of the Principal and started to beat them up for which they raised hue and cry. On hearing cries of the girl students, he along with others went there and brought the girl students out of the principal's room. Soon thereafter accused Manabendra Choudhury (A-3) closed the doors of his room from inside. Deceased Dipak then peeped through the window to see if any girl student was still there. At that very moment, the accused Mahibulla Sheikh fired at Dipak from inside the Principal's room for which he died on the spot. In the meantime, the students including Sagar Dutta started running hither and thither. He also saw accused Mahibulla Sheikh and his constable opening fire at Sagar Dutta. The bullets so fired hit and injured Sagar Dutta. He survived for some time. However, he died later on without receiving any medical treatment. In his cross examination, he denied the suggestion that he did not see Mahibulla Sheikh firing at fleeing Sagar. The suggestion that the Principal charged Sagar Dutta with the allegation of defalcating a sum of Rs. 80,000/- was also denied by PW 5.

33. PW 6, Smti. Joyshree Chakraborty (Banerjee) deposes that on the fateful day the students of Ram Krishna Vidyapith, Ram Krishnanagar including herself staged a "Dharna" in front of the office of the Principal seeking his removal from the post of Principal of the school aforesaid. While the girl students squatted just in front of the Office of the Principal and the boys sat behind them. At about 12.00/12.15 hours, the accused Ranjit Shorn, SDC came there and got involved in a discussion with the Principal and left some time thereafter. The A-2 came there some time thereafter with some police personnel and had some discussion with the Principal. Some time thereafter, Second Officer, Ratabari Police station, Rabindra Sen came there and entered into the room of the Principal. In the meantime, accused Ranjit Shome, SDC came and joined in the discussion. At about 3 p.m. the SDC and police personnel asked the student to leave such place which was, however, not complied with by the students. Soon thereafter, the accused persons dragged the girls to the room of which includes PW 6 as well and those police personnel started to beat them up.

34. It has further been deposed that being so beaten, the girl students came out from the Principal's room shouting and crying. In the meantime, she heard sound of gunshot and saw Dipak falling down on the ground. She also heard the Principal urging someone to shoot at scoundrel Sagar. Moments later, bullets hit Sagar Dutta for which he fell down on the ground and died after about three hours of the incident but without getting any medical treatment. In her cross examination, she states that she saw a gun in the hand of Mahibulla Sheikh.

35. PW 7, Smti. Jyotsna Das Gupta deposes that on the fateful day, she went to the school since her son and grandson were reading in such school at that point of time. On arriving such place, she saw the accused Mahibulla Sheikh fired at Dipak which hit him on his head. She also heard accused principal urging the police personnel present there to shot Sagar Dutta for which Mahibulla Sheikh (A-2) shot at Sagar Dutta which inflicted grievous injuries on his person. Since the injured Sagar was not taken to hospital in time, since he was not provided with any medical help over a very long period of time, he died in the school itself on 18.11.82 towards the evening. In her cross examination, she admitted that when she arrived at the place of occurrence, she saw Dipak Sarma lying dead on the ground. She also saw that Sagar was running for cover to save him from the sudden attack of the police personnel.

36. A bare perusal of the evidence on record, as discussed above, reveals that on 18.11.1982, the students of Ramkrishna Nagar Bidya Pith squatted in front of the office of the Principal demanding ouster of their principal. Towards the afternoon on that day, the police personnel gathered there to keep the situation under control opened fire on the agitating students killing Dipak Sarma on the spot while injuring quite seriously his schoolmate Sagar Dutta which, however, extinguished his life on the same day towards the evening. These aspects of the prosecution case have not been disputed by the defence.

37. A perusal of the evidence of the PWs, particularly, the evidence of PW 1, PW 2, PW-3, PW 4 and PW 5, would also reveal that Dipak Sarma sustained a bullet injury on his head and he received such wound when he tried to peep through the window of the office of the Principal to see what actually was going on inside the room of the Principal at that moments. According to PW 2, PW 3 and PW 5, the billet which silenced Dipak forever was fired by none other than the accused Mahibulla Sheikh (A-2) and that too, from a close range.

38. The story, so projected by PW 2, PW 3 and PW 5, finds more and more support from the evidence of Smti Joyshree Chakravarty (PW 6) since she too deposes that she too was in the contingent of the girl students who were dragged into the office room of the Principal and who were subjected to immense torture and since she also deposes that while inside the room of the Principal, she saw a riffle in the hand of the A-2.

39. One may note here that in his evidence, PW-5 also specifically stated that he saw A-2 and some constables firing at fleeing Sagar Dutta, which ultimately hit

and injured Sagar Dutta. Though number of the wounds, found on the body of Sagar Dutta, gives assurance to such testimony of the PW 5, yet, we refrain from acting on such testimony considering the fact that no other eye witnesses, except PW 7, had uttered any word about their seeing A-2 and other police personnel firing at Sagar Dutta.

40. Coming to the evidence of PW 7, we have found that PW 7 too deposes that she also saw A-2 firing at Sagar Dutta while later was fleeing from the place of occurrence. Once again, we feel not inclined to act on such evidence of the PW 7. This is because of the reason that in her examination in chief, PW-7 had stated that when she came to the place of occurrence, she saw A-2 firing at both the boys.

41. However, in her cross-examination, she has also stated that when she arrived at the school, she saw Dipak Sarma lying already dead inside the compound of school aforesaid. In her cross-examination, she further states that arriving at the school she also saw A-2 firing at a fleeing Sagar Dutta. Thus, PW 7 makes two mutually incompatible testimonies and such mutually incompatible evidence makes her a witness unsafe for reliance.

42. The evidence of the PW 7 cannot be accepted for other valid reason as well. There is undeniable evidence to show that the two incidents which occasioned the death of two young boys occurred in rapid succession. However, PW 7 tries to dispute such undeniable testimony stating that the incidents aforesaid occurred after some interval. Being so, we have no other option but to keep the entire evidence of the PW 7 beyond the purview of our consideration.

43. On scrutinizing the evidence on record, we have found that that there is incontrovertible evidence to show that moments after Dipak fell to the bullet fired upon him by the accused Mahibulla Sheikh (A-2), accused Manabendra Choudhury (A-3) started instigating police personnel inside his room to fire at Sagar Dutta blaming him to be the culprit responsible for the entire incident. In response to such instigation, some of the officials inside the office room of the Principal immediately fired shots at Sagar Dutta who was then running for cover to save his life, some of which, however, hit and injured which occasioned his death sometime thereafter. The above evidence, therefore, very firmly demonstrates that the shots which hit, injured and killed Sagar Dutta were, in fact, fired at the instigation of the A-3. The evidence of PW 1, PW 2, PW 3, PW 4, PW 5 and PW 6 makes such position more than clear.

44. But then, it needs to be concluded that although the prosecution makes a serious attempt to show that A-2 was the man responsible for shooting and killing aforesaid hapless boy, however, on the materials on record, as stated above, it cannot be said with certainty that the culprit who actually fired shots at escaping Sagar Dutta on the instigation of A-3 was none other than which A-2.

45. On reading the evidence of the PWs in between the lines, we have also found that though there is evidence to show that A-1 kept on coming to the PO again

and again and although there is evidence to show that A-1 was at the PO when shot out actually occurred, yet, there is no reliable and dependable evidence to come to a conclusion that the accused Ranjit Kumar Shorn (A-1) had done any overt/covert act in extinguishing life of those two young boys.

46. The prosecution case, however, comes under sharp criticism allegedly for its suffering from several serious infirmities. Spearheading the arguments on behalf of the accused persons, A-3 in particular, learned Amicus Curiae Mr. A. Chamua arduously contends that this court needs to reject the prosecution claim on grounds more than one. In the first place, he contends that evidence of prime prosecution witnesses cannot be accepted since their testimonies are found to be riddled with contradictions and inconsistencies of enormous proportion.

47. In that context, he has referred us to various infirmities in the testimony of PWs, PW 2 and PW 7 in particular. On considering above submissions, in the light of testimonies, rendered by witnesses, we have found that except PW-2 and PW-7 all other PWs are found to be totally truthful since their testimonies on all material points are found to be cogent, consistent and complimentary to one another. Our forgoing discussions have made such position clear and same needs no further reiteration here.

48. In so far, PW 7 is concerned, we have found that the evidence of PW 7 suffers from some inherent infirmities for which we have already kept such evidence beyond our consideration. On the other hand, evidence of PW 2 is found truthful in part and found laced with falsehood in part. It may be stated that it is a settled proposition of law that when the evidence of a witness is found to be truthful in part and laced with lies in part, the entire evidence of such witness need not be discarded. Evidence of such a witness can still be relied upon provided that his truthful part can be segregated from the part with falsehood, and that too, without affecting the intrinsic value of truthful part of the evidence of such a witness. In that regard we may also perused the decision rendered in the case of Kanbi Nanji Virji and Others Vs. The State of Gujarat, . Relevant part is reproduced below:--

"It is true that oftentimes the courts have to separate the truth from falsehood. But where the two are so intermingled as to make it impossible to separate them, the evidence has to be rejected in its entirety. The High Court overlooked this well accepted principle. If we reject the evidence of P.W. 5, as we think we should, the prosecution case must be held to be unsubstantiated because there is no other evidence to support it. Whatever other evidence was there it has been rejected by the Trial Court as well as by the High Court as false. In this view it is not necessary to go into the question whether Kasalsing's evidence comes within the scope of Section 157 of the Evidence Act".

49. Similar view has been rendered by Apex Court of the Country in the case of Ranjit Singh and Others Vs. State of Madhya Pradesh, wherein it was held that the maxim *Falsus in Uno, Falsus in Omnibus* has no application in India. The

relevant part is reproduced below:-

"It is well settled in law that the maxim falsus in uno, falsus in omnibus (false in one false in all) does not apply in criminal cases in India, as a witness may be partly truthful and partly false in the evidence he gives to the Court. (Vide: Kulwinder Singh Vs. State of Punjab, ; Ganesh Vs. State of Karnataka and Others, ; Jayaseelan Vs. State of Tamil Nadu, ; Mani @ Udattu Man and Others Vs. State rep. by Inspector of Police, ; and Balraje @ Trimbak Vs. State of Maharashtra, ."

50. Coming back to the case in hand, we have found that the evidence of the PW 2 that he saw A-2 firing at Dipak Sarma is found to be truthful whereas his evidence that the two incidents which took away the lives of two young boys occurred at an interval of one and a half hours is found to be untruthful one. But then, the truthful part of the evidence of the PW 2, in our opinion, can easily be segregated from the untruthful part of the testimony of PW-2, and that too, without affecting the intrinsic value of truthful part of the evidence PW 2.

51. In view of the above, on applying the law laid down in the case of Ranjit Singh (supra), we have found that truthful part of the evidence of PW 2 can still be relied on. Such truthful part of evidence of PW 2, we find, lends more and more support to the claim of PW 3 and PW 5 that A-2 had actually shot at Dipak Sarma on the afternoon aforementioned which occasioned his instantaneous death.

52. The learned Amicus Curiae again submits that the evidence of PW 5 that he saw A-2 and other police officials firing at Sagar Dutta cannot be believed since such a conduct on the part of PW 2 has no backing of normal human behavior since nobody is expected to see some incident of extremely terrible nature putting his own life at stake. This is another reason for which the entire evidence of PW 5 needs to be rejected, same being inconsistent with normal human behavior.

53. In support of such contention he relied on a decision Hon''ble Supreme Court in the case of Lalloo and Another Vs. State of U.P., . The relevant part is reproduced below:-

"To connect the appellants with the crime, it was stated by the eyewitnesses at the trial that the appellants had caught hold of the nose strings of bullocks--as assertion which finds no mention in the FIR lodged by PW 2 and appears to be a definite improvement made to rope in the appellants. It appears wholly unnatural to us that the appellants should have been holding the nose strings of the bullocks while firing was going on from the side of their co-accused. The pistol with which Lallu Singh, S/o. Yadram Singh was armed, was a country-made pistol and it would have been most risky for the appellants to be so close to the place where their co-accused were aiming the fire-shots. The appellants would not have taken such a grave risk. It is alleged that they let go of the nose strings only after Har Swaroop as shot dead by firing of three shots. Besides, the

conduct of the three eyewitnesses also appears to be rather unnatural. Abhey Singh is the son of the deceased-yet he kept standing as a mute spectator and did not even raise an alarm. This conduct belies normal human conduct. In view of the previous enmity, which is an admitted case of the parties, the possibility that these appellants, to whom only lalkara is attributed in the FIR were falsely implicated, cannot be ruled out. Our careful analysis of the evidence on the record has created an impression on our minds that the eyewitnesses are not wholly reliable insofar as their evidence against these appellants is concerned. Their evidence does not inspire confidence and their conduct also gives us an impression that they were not telling the truth."

54. Such an argument is, however, without any substance. Human behavior is too complicated a matter to be encompassed in some circles of common behavior. In a given situation, people may behave in an extremely different manner depending on various factors including the mental makeup of such a person. Therefore, it cannot be said that a person would always flee from a trouble spot in order to place him in a safer zone. Rather, in demonstration of some exemplary courage and valour, people may rise to the occasion and may do some things extremely extra-ordinary in nature. Human history is replete with such stories.

55. These apart, we have already found that two incidents which evidently snatched away the lives of two young boys occurred in quick succession. There is also evidence to show that some students including PW 5 were at a place very close to the place where from deceased Dipak Dutta was looking into the office room of the Principal. When one considers such evidence together, he would find no serious infirmity in the testimony of the PW 5 that he saw the A-2 firing at the fleeing Sagar Dutta. However, despite the evidence of the PW 5 being found nearly truthful and in spite of such evidence showing that A2 too fired several shots at the fleeing Sagar Dutta, yet, we fell not inclined to act on such evidence for want of further corroboration from other witnesses. Situation being such, the contention that the entire evidence of the PW 5 needs to be rejected is found to be without any substance.

56. It is also the case of learned Amicus Curiae that witnesses examined from the side of prosecution are inimical towards the A-3 and as such, their evidence cannot be relied upon unless such evidence is found to be free from all infirmities whatsoever. Unfortunately, according to learned Amicus Curiae, that was not the position in the case under consideration.

57. In support of such contention, it has been pointed out that most of the witnesses, examined from the side of prosecution, were students and they were hell bent in removing A-3 from the post of Principal. Worse still, the A-3 had even charged the PW-5 for defalcating a sum of Rs. 82,000/- as back as 1982.

58. In support of above contention, our attention has been drawn to the decisions of Hon'ble Supreme Court, rendered in the case of Superintendent and

Remembrancer of Legal Affairs, W.B. Vs. Mangal Pathak and Others, . For ready reference the relevant part is reproduced below:-

"The medical evidence also corroborates in respect of overt acts committed by these three accused. Therefore, we think it is absolutely safe to convict these three accused and give benefit of doubt to other. But by this way we are not in any manner doubting the evidence of PWs 1 and 12. By way of abundant caution having regard to the fact that they are interested witnesses and after a careful consideration keeping in view the principles regarding the scrutiny of such interested witnesses, the other accused are given benefit of doubt for the above-stated reasons. However, we have no hesitation to accept their evidence as against A-2, A-3 and A-8 to whom specific overt acts have been attributed. In our view, the prosecution has established the guilt of these three accused beyond all reasonable doubt. The view taken by the High Court in acquitting all the accused, as stated above, is wholly erroneous."

59. Such an argument is found unequal to the task assigned. Coming to the allegation that all the students were hell bent in removing A-3 from the post of Principal of the school aforesaid and as such, their evidence should not be relied on, it may be stated that it is true that the students of the school aforesaid, some of whom are witnesses, had some grievances against A-3 and they tried their best to remove A-3 from the post of Principal.

60. However, only for such allegation, the evidence of PWs cannot be brushed aside. Rather, our scrutiny of the evidence of the PWs, evidence of PW-1, PW-3, PW-4, PW-5 and PW-6 imparticular, reveals that those PW 5 are very truthful and their enmity with the Principal had nothing to do with their evidence and as such, one can place implicit reliance on their testimonies.

61. Coming to the allegation that the evidence of PW 5 should not be believed since A-3 charged him with the allegation of defalcating an amount of Rs. 82,000/-, we have found that there is absolutely nothing on record to show that such an allegation was based on facts. Quite contrary to it, we have found that such allegation was made just to shield the A-3 from the charge leveled against him.

62. Learned Amicus Curiae again argues that though there were some independent witnesses at the PO on the day in question, yet, they were not examined. Rather prosecution places enormous reliance on the testimonies of the witnesses who had huge stake on the outcome of the aforesaid case. Once again such an argument too is found to be without any substance.

63. We have already found that on the fateful day, since morning, a Dharna had been staged in front of the office of the Principal and it was carried even towards the late afternoon. Again, evidence on record reveals that the incident occurred well inside the Ramkrishna Nagar Bidya Pyth. Therefore, the contention that a large number of public witnessed the incident in question is found to be too farfetched one.

64. The testimony of PWs were questioned also on the ground that there is undeniable evidence to show that A-2 came to the P.O., without being armed. But the evidence on record unmistakably demonstrates that both the boys died of bullet injury/injuries. How come, then, is it possible for the A-2 to kill the boys, and that too, with rifle as alleged by the prosecution. According to learned Amicus Curiae, this is one more testimony of the prosecution case being founded on falsehood.

65. Such contention is, however, based not on facts. It is true that there is evidence to show that when A-2 came to the school, he was not armed but there is indisputable evidence in the form of testimonies of PW 3 and PW 6 to show that as the incident was going on, A-2 snatched a riffle from the follow police men which he ultimately used in firing at least at Dipak Sarma. Therefore, above contention too could cause no harm to the prosecution case.

66. We have already found that there is evidence on record to show that some person/persons fired at Sagar Dutta from inside the room of the Principal on the instigation of A-3. It is, therefore, argued that since the person(s) who fired at Sagar Dutta on the instigation of A-3 remained unidentified, it is not permissible under the law to convict the person(s) who instigated someone to commit some crime. Does such a contention hold water?

67. The answer to this quarry is rendered by Apex Court in the case Gallu Sah Vs. The State of Bihar, . For ready reference same is reproduced below:-

"9. It seems to us, on the findings given in the case, that the person who set fire to the hut of Mst. Rasmani must be one of the persons who were members of the unlawful assembly and he must have done so in consequence of the order of the present appellant. It is, we think, too unreal to hold that the person who set fire to the hut of Mst. Rasmani did so irrespective, or independently, of the order given by the present appellant. Such a finding, in our opinion, would be unreal and completely divorced from the facts of the case and it necessary to add that no such findings was given either by the learned Assistance Sessions Judge who tries the appellant or the learned Judge of the High Court. As we read the findings of the learned Judge, it seems clear to us that he found that the person who set fire to the hut of Mst. Rasmani did so in consequence of the abetment, namely, the instigation of the appellant.

10. It is necessary to refer to two decisions to which our attention has been drawn by the learned Advocate. The decision in Raja Khan and Another Vs. Emperor, related to a case where one Torap Ali was held to be guilty of cheating by personating one Sabdar Faraji and using his name on a surety Bond. The charge against Torap Ali was that he was the principal in the case and the charge against Raja Khan and Cherak Ali Akon, the two appellants in the case, was that they abetted by being present at the personation which was alleged to have been committed by Torap Ali. Torap Ali was acquitted by the jury. The learned Judge who presided at the jury trial did not, however, tell the jury what would be the

effect of the acquittal of Torap Ali on the charge of abetment against Raja Khan and Cherak Ali. It was because of this omissions that the conviction of Raja Kahn and Cherak Ali was set aside. The head note of the report, however, said in general terms that where a person is charged with having committed an offence and another is charged with having abetted him in the commission thereof, and the prosecution fails to substantiate the commission of the principal offence, there can be no conviction for abetment. The general statement was considered in a later decision in *Umadas Dasi v. Emperor* (1924) I.L.R. 52 Cal. 112, and it was pointed out that in the majority of cases the aforesaid general statement might hold good; but there are exceptions to the general rule, particularly when there is evidence which satisfactorily establishes that the offence abetted is committed and is committed in consequence of the abetment.

11. We accordingly hold that the conviction of the appellant for the offence under Section 436 read with section 109, Indian Penal Code, is not bad in law. As to the sentence it does not appear to us that it errs on the side of severity. It has been stated that the appellant was released on bail on serving out the sentence passed against him for the offence under sections 147 and 323, Indian Penal Code. In our opinion, the appeal has no merit and must be dismissed. The appellant must now surrender himself to serve out the remainder of his sentence."

68. The decision in *Gallu Sah* (supra) furnishes full answer the contention of the learned Amicus Curiae that the principal offender cannot be convicted unless the abettor is convicted and punished for the offence abetted. Therefore, we not inclined to probe the matter on this count any further.

69. Here, it may be mentioned that learned counsel for A-2 has again contended that the accused/respondents were not given opportunity to cross examine the witnesses before the framing of charges. According to him, unless the defence is given an opportunity to cross examine the prosecution witnesses, such evidence is no evidence in the eye of law and as such, same cannot be utilized for any purpose whatsoever.

70. According to the learned counsel for A-2, before framing of charge against the accused persons, learned Sessions Judge did not afford accused persons any opportunity to cross examine the witnesses. According to counsel, the denial of such right is quite fatal since it offends the procedural laws holding the field on that count. Controverting such an argument, Mr. Z. Kamar, learned P.P. submits that under the law, before the framing of charge, the accused in a Sessions triable case instituted otherwise than police report, cannot have any right, whatsoever, to cross examine the witnesses.

71. We have considered the submissions of the learned counsel for the parties in the light of the provisions of Section 208/ 209/ 225/ 226/ 227/ 228 of the Cr.P.C., and found some valid reasons to conclude that before framing of charge in a case instituted otherwise than on a police report, the accused in a sessions

triable case cannot have any right to cross examine the witnesses.

72. Now, the question is whether on the basis of aforesaid evidence, it can be held that Dipak Sarma and Sagar Dutta were killed by the accused persons in furtherance of their common intention. We have already found that evidence on record clearly shows that on the fateful day the A-1 came to the aforesaid school in discharge of his official duties. Evidence on record further shows that the incident in question snowballed into a violent event all of a sudden when the girl students refused to leave the place of Dharna. We have also found that Dipak Sarma was shot and killed the moment he peeped through the window of the room of the Principal. All these may perhaps be the testimonies to the fact that Dipak Sarma got killed without there being any meeting of minds of accused persons.

73. Again although there is solid evidence to show that the police personnel in the office room of the Principal had shot, injured and killed Sagar Dutta on the instigation of A-3, yet, such evidence, by no stretch of imagination, can be read to mean that Sagar Dutta was also killed in prosecution of common intention of all accused persons aforesaid.

74. Therefore, the allegation that all the accused persons are constructively liable for the killing of Dipak Sarma and Sagar Dutta is found to be far from being established. The fact that the prosecution could not show any overt or covert act on the part of the A-1 in killing of the ill-fated boys makes such a conclusion inevitable.

75. Learned Amicus Curiae further submits that under criminal jurisprudence, the accused is always presumed to be innocent unless contrary is proved. Such presumption gets fortified more and more, once the person charged with crime gets acquittal and such order of acquittal cannot be disturbed unless and until an extraordinary situation is made out for interference such acquittal. According to learned Amicus Curiae, in the present case, the appellant could not make out a case requiring this court to interfere with the order of acquittal rendered in favour of A-1, A-2 and A-3. Hence, on this score too, learned Amicus Curiae urges this court to dismiss the present appeal.

76. We have already found that the prosecution could beyond all reasonable doubt prove the charge u/s. 302 IPC against accused Mahibulla Sheikh (A-2) so also the charge u/s. 302 IPC read with section 109 IPC against accused Manbendra Choudhury (A-3). However, on materials on record, we are to conclude that the prosecution could not make out the charge, leveled against A-1.

77. In view of above, the judgment, under challenge, in so far it relates to A-1 invites no interference. But the said judgment in so far it relates to A-2 and A-3 under which those two accused persons stood acquitted of offences leveled against them, being found not in tune with evidence on record as well as law holding the field, needs interference.

78. Consequently, while maintaining the judgment of acquittal in respect of A-1, same is quashed and set aside as far as A-2 and A-3 are concerned.

79. Accordingly, A-2 is convicted of offence u/s. 302 IPC whereas A-3 is convicted of offence u/s. 302 IPC read with section 109 IPC.

80. On considering materials on record, we sentence A-2 to suffer imprisonment for life and a fine of Rs. 5,000/- i.d., R.I., for another 6 months for offence u/s. 302 IPC. On the other hand, A-3 is sentenced to suffer imprisonment for life and a fine of Rs. 5,000/- i.d., R.I., for another 6 months for offence u/s. 109 read with section 302 IPC.

81. The appeal is, therefore, partly allowed.

82. A-2 and A-3 are directed to surrender before the trial court immediately in order to serve out the sentence. In the event of their failure to do so, the court below would take action against them in accordance with law.

83. Before we part with the record, we express our deep dissatisfaction, dismay and disappointment the way the administration handled the dispute in question. The incident aforesaid was so shocking, so gruesome that the administration ought to have acted promptly and resolutely in order to bring the culprit(s) to book. Unfortunately, the administration did nothing to discharge its constitutional and legal duties. Quite contrary to it, the administration seemed to be satisfied only with initiation of an unnatural death case which is, in fact, a cleaver attempt to shield the actual culprits from punishment.

84. What is worse, the administration did not show least sympathy to the two young boys who died in a most unfortunate and tragic situation. This is apparent from the fact that even being injured quite grievously and even there was fervent request from the teachers and students alike, the administration made no effort to provide the minimum medical assistance to hapless boys. Instead they were left to the without any medical treatment. This is too tragic, too terrible to say the least.

85. These revelations only show that some stringent departmental actions need to be taken against the offending officials responsible for not initiating necessary legal action against the officials who occasioned the incident under consideration, provided they are still in service.

86. We, therefore, direct the authority concerned to initiate necessary legal action against the officer/officers for their criminal negligence in not taking legal actions against the culprit(s) who abruptly brought end to two young boys on 18.11.1982.

87. We also direct the State Legal Services Authority to pay the legal representatives of each of the deceased who suffered loss due to death of those two boys an amount to the tune of Rs. 2,00,000/- (Rupees two lakhs) each within a period of 2 months from the date of order. The Government of Assam

shall make available the required fund to the State Legal Services Authority. The learned amicus curiae shall be paid the professional fee of Rs. 7,500/- by the State Government within 1 (one) month from today.