

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM : NAGALAND : MIZORAM & ARUNACHAL PRADESH)

PRINCIPAL SEAT AT GUWAHATI

CRIMINAL APPEAL (J) No. 90 of 2013

1. Paresh Mura,
Son of Benu Mura,
 2. Benu Mura,
Son of Late Nirod Mura,
- Both are resident of Laboc Tea Estate,
Police Station - Lakhipur,
District - Cachar, Assam.

..... *Appellants / Accused Persons.*

–VERSUS–

State of Assam

..... *Respondent.*

Advocate for the Appellants : Ms. Bijita Sarma, *Amicus Curiae*,

Advocate for the Respondent: Mr. Nava Kumar Kalita,
Additional Public Prosecutor, Assam.

B E F O R E

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MR. JUSTICE HITESH KUMAR SARMA

Date of Hearing : 18-11-2017

Date of Judgment & Order : 22.12.2017

JUDGMENT & ORDER (CAV)

(M.R.Pathak,J)

This criminal Appeal from jail is preferred by the accused appellants Paresh Mura and Benu Mura being aggrieved with the judgment and order dated 03.08.2013 passed by the learned Additional Sessions Judge, Fast Track Court,

Cachar, Silchar in Sessions Case No. 234 of 2010, arising out of Lakhipur Police Station (District-Cachar) Case No. 114 of 2010 (corresponding to G.R. Case No. 1436/2010) by which the appellants/accused persons have been convicted under Section 302/34 of the Indian Penal Code and sentenced them to undergo Rigorous Imprisonment for Life and also to pay fine of Rs. 5,000/- each, in default of payment of fine to undergo Rigorous Imprisonment for further period of 3 (three) months, setting off the period of imprisonment undergone by them in their custody during investigation and trial of the case.

2) Heard Ms. Bijita Sarma, learned *Amicus Curiae*, for the accused appellants and Mr. Nava Kumar Kalita, learned Additional Public Prosecutor, Assam for the State.

3) The prosecution case, as it emerges from the First Information Report dated 23.04.2010 (Exhibit-2) lodged by one Sabitri Kahar (PW.1) before Lakhipur Police Station, is that around 3:00 p.m. on 22.04.2010 the accused persons, Paresh Mura and Benu Mura, co-villagers, trespassed on the homestead of her son Uttam Kahar and attempted to set fire to his house and on seeing it her son ran away from his house and entered the house of another co-villager Chinia Karmakar, where the accused persons pulled him out, gave lathi and dao blow on his head, causing him grievous injury, threw him in a drain and left the place and thereafter he was taken to Silchar Medical College Hospital, Silchar where he is undergoing treatment and it is the accused persons who struck her son Uttam Kahar in his chest and caused him grievous injury.

4) On receipt of said FIR, Lakhipur Police Station Case No. 114/2010 under Sections 447/326/34 of the Indian Penal Code corresponding to G.R. Case No. 1436 of 2010 was registered against the accused appellants. As on 28.04.2010 said Uttam Kahar succumb to his injuries at Silchar Medical College Hospital, Silchar (SMCH, Silchar in short), on the prayer of the Investigating Officer of the case, learned Chief Judicial Magistrate, Silchar by his order dated 01.05.2010 allowed to add Section 302 IPC in said Lakhipur PS Case No. 114/2010.

5) During investigation, the Investigating Officer visited the place of occurrence, drawn its sketch map (Exhibit-3), obtained the Inquest Report (Exhibit-4) of the deceased that was conducted by the concerned officer of Ghungoor Out Post in presence of Executive Magistrate, Silchar, obtained the Post Mortem Examination report of the deceased Uttam Kahar dated 29.04.2010 (Exhibit-1), recorded the statements of the persons acquainted with the facts of the case under Section 161 Cr.P.C., arrested the accused Paresh Mura on 01.05.2010, found the accused appellant Benu Mura to be an absconder as he was evading arrest and on completion of the investigation, finding sufficient incriminating materials, filed the Charge Sheet vide No. 107/2010 dated 31.05.2010 against the accused appellants for the offence under Section 302 of the IPC.

6) On a receipt of the aforesaid charge sheet of the case, learned Chief Judicial Magistrate, Cachar, Silchar transferred the said G.R. Case No. 1436 of 2010 to the Court of learned Judicial Magistrate First Class, Cachar, Silchar for the trial and disposal of the same. Later, accused Benu Mura was arrested after warrant of arrest was issued by the learned Magistrate in the case and as Section 302 IPC is exclusively triable by the Court of Sessions, learned JMFC, Cachar, Silchar vide order dated 26.08.2010 committed the aforesaid G.R. case to the Court of learned Sessions Judge, Cachar, Silchar. Accordingly, the same was registered and numbered as Sessions Case No. 234/2010 and learned Sessions Judge, Cachar, Silchar by his order dated 06.09.2010 transferred the said Case to the Court of learned Additional Sessions Judge, Fast Track Court, Cachar, Silchar for its trial and disposal. By order dated 05.10.2010 said Trial Court framed formal charge under Sections 302/34 of the IPC against the accused appellants for allegedly killing Uttam Kahar, which were read over & explained to them, to which the accused appellants pleaded not guilty and claimed to be tried and accordingly, the trial of the case began.

7) To bring home the charge under Section 302 of the IPC against the accused appellants, the prosecution examined eight prosecution witnesses including the autopsy doctor PW 5, who conducted post-mortem examination of

the decease, the informant PW 1, mother of the deceased and the Investigating Officer of the case PW 7. All the prosecution witnesses were thoroughly cross examined by the defence and thereafter they were discharged. Though the defence did not examine any witnesses from its side, but all the prosecution witnesses were thoroughly cross examined by them. The learned Trial Court also recorded the statement of the accused appellants under Section 313 Cr.P.C on 08.05.2013 where they denied of committing the crime in the case. Learned Additional Session Judge, (FTC), Cachar, Silchar upon appreciation of the evidence adduced by the prosecution, recorded the impugned judgment of conviction as aforesaid and hence, the present appeal.

8) Ms. B Sarma, learned Amicus Curiae for the appellants submitted that as the prosecution failed to prove the guilt of the appellants beyond reasonable doubt to bring home the charge of Section 302 IPC against them, therefore the impugned judgment of conviction and sentence against the accused appellants being bad in law is liable to set aside and quashed.

9) On the other hand Mr. NK Kalita, learned Additional Public Prosecutor supporting the judgment and order of conviction submitted that prosecution has placed sufficient materials to prove guilt of the accused beyond all reasonable doubt.

10) We have considered the submissions advanced by the learned counsels appearing for the parties and also perused the evidence adduced by the parties in said Sessions Case No. 234/2010, apart from the judgment of conviction recorded by the learned Trial Court.

11) In order to appreciate the arguments, advanced by the learned counsels appearing for both the parties and to examine the correctness of the impugned Judgment and Order of conviction, let us briefly scrutinize the evidence on record.

12) The prosecution examined **PW 5**, Dr. Y N Singha, the Autopsy Doctor, who conducted the post-mortem examination of the dead body of the deceased Uttam

Kahar on 29.04.2010 at SMCH Hospital and gave the Post Mortem Report vide Exhibit-1. In his evidence said PW 5 deposed that during his examination of the dead body of said deceased, he found the following injuries:

- (i) Stitched incised wound measuring 8 X 0.3 cm with surgical drain attached found over the right parital oxipital scalp in the back of head (surgical).
- (ii) Stitched incised wound measuring 9.03 cm with surgical drain found over the left parital oxipital scalp.
- (iii) Depressed comunited fracture of the vault of skull seen involving both parital and oxipital bones measuring 8 X 10 cm sqare with area of depression measuring 6 X 05 cm.
- (iv) Extra dural clot measuring 8 X 5 x 3.5 cm seen over the right parito oxipital scalp.

The said Autopsy Doctor, PW 5 opined that the death of the deceased was due to coma as a result of head injuries as described which were ante-mortem in nature, caused by blunt force impact and homicidal in nature. The defence declined to cross examine the said PW 5.

13) It is seen that the prosecution by examining said PW 5, the Autopsy Doctor, could prove the injuries found on the body of the deceased and also the cause of his death. Let us now see as to whether the prosecution could bring home the charge under Section 302 of the IPC against the accused appellants.

14) PW 1 Smti. Sabitri Kahar, the informant, mother of the deceased though not an eyewitness to the incident of causing grievous injuries to the deceased by the accused appellants, but her evidence regarding the trespassing of the accused persons to their homestead and threatening to set fire in their dwelling house by shouting 'burn all the inmates of the family' and of chasing her son with dao and lathi in their hand when her son, the deceased ran from his house hearing on yell out of the accused persons remained intact during her cross examination by the defence.

15) PW 2, Smti. Mala Kahar, sister of the deceased who was present in her parental house at the time of incident, who also did not see of causing grievous injuries to the deceased by the accused appellants, but her evidence regarding the trespassing by the accused persons in the house of her brother, yelling that her brother, the deceased would not be spares, threatened to set fire to their house and the intent to burn down the family members including her said brother, the deceased and of chasing of her brother with dao and lathi, when he fled away from his house hearing the yell of the accused persons could not be destroyed by the defence.

16) PW 3, Sri Siten Karmakar, son of late Chinia Karmakar (of whom the informant PW 1 mentioned in her FIR Exhibit-1), an independent witness and co-villager of both the accused appellants and the deceased, in his evidence deposed that when he just returned to his after bath, suddenly hearing a thundering sound, when he came out of his house, he saw that the accused Paresh was assaulting the deceased Uttam Kahar by a big lathi and gave lathi blow on the head of said Uttam, now deceased. Said PW 3 also deposed that he saw the other accused person Benu Mura suddenly appeared in the said spot, but stated that he did not see whether Benu Mura had inflicted any blow on said Uttam. He further deposed that the accused Paresh Mura lifted said Uttam and thrown him in the nearby *nala* (drain)

In his cross examination by the defence said PW 3 stated that the dead body was found at a distance of 30/35 cubits away from his house and that he did not know as to whether there was any enmity of the deceased with the accused persons prior to the said occurrence and also denied the suggestion that the accused Paresh did not assault the deceased with lathi and that said deceased sustained injury on fall on way of running from his house resulting his death.

17) PW 4, Smti. Joshoda Kahar wife of the deceased though not an eyewitness to the incident of causing grievous injuries to the deceased by the accused appellants, but her evidence regarding the trespassing of the accused persons to their house, asking her husband Uttam Kahar to come out from the house and of

chasing her husband by the accused person Paresh Mura with lathi in his hand when her husband, the deceased, out of fear escaped from the house and ran away, could not be demolished by the defence during her cross examination by the defence.

18) PW 6, Sri Sabul Karmakar, in his evidence deposed that informant is his close door neighbour whereas the accused persons are also from his locality and on the date of the incident around 3/3½ p.m., when he was just left his house on the way to his pan, on coming out to the road, he saw that both the accused persons Paresh and his father Benu were dragging Uttam Kahar, the deceased at his courtyard, where the accused Paresh was having dao in his back and a lathi in his hand and though said Uttam Kahar was seeking apology from both the accused persons asking them to forgive him and when said Uttam Kahar tried to escape by entering his own house, both the accused persons asked him to come out. Said PW 6 further deposed that though ultimately Uttam tried to escape by the backside of his house, but the accused persons chased him and then he left for his pan shop and in the evening he heard from public that said Uttam had been shifted to SMCH and that after 6/7 days later he heard that said Uttam expired.

In his cross examination by the defence said PW 6 denied the suggestion that accused Paresh did not have a dao in his hand also denied that he deposed falsely.

19) From the above deposition of PW 6, an independent witness, it is seen that the defence could not destroy the evidence of chasing of the deceased by the accused persons with arms like dao and lathi with them, inspite of said Uttam seeking apology from them.

20) PW 7, Sri Chakreswar Kaman, Investigating Officer of the case, in his evidence deposed that during the investigation of the case when he went to the place of occurrence, the relatives of the said deceased informed him that he was already taken Laboc Hospital, from where he was later referred to SMCH at Silchar and on 28.04.2010, one Dr. Rupankar Nath, doctor from SMCH informed him that

the injured Uttam Kahar succumbed to his injuries. He also deposed that at the same time said doctor of SMCH also informed the police Ghungur Out Post and later on the death of the said injured Uttam Kahar, on his prayer, learned CJM, Cachar, Silchar allowed him to add Section 302 IPC in the case. He further deposed that though accused Paresh Mura was arrested but accused Benu Mura evaded arrest till the filing of the charge sheet in the case.

In his cross examination by the defence said PW 7 stated that he did not interrogate the deceased while he was in the hospital during 23.04.2010 to 28.04.2010 nor he met the said injured at SMCH. However, during his said cross examination, said PW 7 stated that during his investigation of the case, the PW 4 (wife of the deceased) in her statement made under Section 161 CrPC did not state before him that the accused Paresh Mura had a dao in his hand nor she stated that she saw the accused Paresh Mura assaulting the deceased with dao and lathi near the house of Siten Karmakar.

21) PW 8, Ajay Kanti Nath, ASI of Police, in his evidence deposed that on 28.04.2010 when he was attached to Ghungoor Out Post they received message from SMCH sent by one Dr. Rupankar Nath that one Uttam Kahar, who was admitted in the Surgical Unit of SMCH Silchar in injured condition in connection with Lakhipur PS Case No. 114/2010 succumbed to his injuries and accordingly a GD Entry No. 625 dated 28.04.2010 was made in the said Out Post and thereafter inquest of said deceased was done in presence of the Executive Magistrate and accordingly Inquest Report (Exhibit 4) was prepared. He also deposed that he made necessary arrangement for Post Mortem Examination of the said deceased and collected the said report. However, the defence declined to cross examine said PW 8.

22) From the evidence adduced by the prosecution it is clear that the death of the deceased was due to coma as a result of head injuries that were ante mortem, caused by blunt force impact, which were homicidal in nature. It is also clear in evidence lead by the prosecution that earlier, the deceased was dragged by the accused persons in his house, who sought for apology from them and also prayed

to them to forgive him, where the accused Paresh Mura had a dao on his back and lathi in his hand and that both the accused persons chased the deceased when he escaped and ran away from the accused persons. It is also seen that the prosecution by adducing evidence could prove that the accused Paresh Mura assaulted the deceased Uttam by giving big lathi blow on his head and the said accused Paresh Mura lifted the deceased Uttam and thrown him in a nala (drain).

23) From the above, we are of the considered opinion that the prosecution could lead cogent and reliable evidence which proved the guilt of the accused appellant Paresh Mura, with regard to his involvement in the alleged crime of murdering the deceased person Uttam Kahar on the fateful afternoon of the date of the incident beyond all reasonable doubts.

24) From the aforesaid discussion, we are of the view that the judgment of conviction and sentence dated 03.08.2013 with regard to the accused appellant Paresh Mura has rightly been recorded by the learned Additional Sessions Judge, (FTC), Cachar Silchar in Sessions Case No. 234/2010, arising out of Lakhipur PS Case No. 114/2010 which does not call for any interference in this appeal. Accordingly, we affirm the conviction and sentence recorded by the learned Trial Court with regard to the accused appellant Paresh Mura.

25) With regard to Section 34 IPC, the Hon'ble Supreme Court in the case of *Dani Singh -Vs- State of Bihar*, reported in (2004) 13 SCC 203 have held as follows:

19. The section really means that if two or more persons intentionally do a common thing jointly, it is just the same as if each of them had done it individually. It is a well-recognised canon of criminal jurisprudence that the courts cannot distinguish between co-conspirators, nor can they inquire even if it were possible, as to the part taken by each in the crime. Where parties go with a common purpose to execute a common object, each and every person becomes responsible for the act of each and every other in execution and furtherance of their common purpose; as the purpose is common, so must be the responsibility. All are guilty of the principal offence, not of abetment only. In a combination of this kind a mortal stroke, though given by one of the parties, is deemed in the eye of the law to have been given by every individual present and abetting. But a party not cognizant of

the intention of his companion to commit murder is not liable, though he has joined his companion to do an unlawful act. The leading feature of this section is the element of participation in action. The essence of liability under this section is the existence of a common intention animating the offenders and the participation in a criminal act in furtherance of the common intention. The essence is simultaneous consensus of the minds of persons participating in the criminal action to bring about a particular result. [Ramaswami Ayyangar -Vs- State of T.N. (1976) 3 SCC 779] The participation need not in all cases be by physical presence. In offences involving physical violence, normally presence at the scene of offence may be necessary, but such is not the case in respect of other offences when the offence consists of diverse acts which may be done at different times and places. The physical presence at the scene of offence of the offender sought to be rendered liable under this section is not one of the conditions of its applicability in every case. Before a man can be held liable for acts done by another, under the provisions of this section, it must be established that: (i) there was common intention in the sense of a prearranged plan between the two, and (ii) the person sought to be so held liable had participated in some manner in the act constituting the offence. Unless common intention and participation are both present, this section cannot apply.

20. *“Common intention” implies prearranged plan and acting in concert pursuant to the prearranged plan. Under this section a preconcert in the sense of a distinct previous plan is not necessary to be proved. The common intention to bring about a particular result may well develop on the spot as between a number of persons, with reference to the facts of the case and circumstances of the situation. Though common intention may develop on the spot, it must, however, be anterior in point of time to the commission of offence showing a prearranged plan and prior concert. [Krishna Govind Patil -Vs- State of Maharashtra AIR 1963 SC 1413] In Amrik Singh -Vs- State of Punjab [(1972) 4 SCC (N) 42] it has been held that common intention presupposes prior concert. Care must be taken not to confuse same or similar intention with common intention; the partition which divides their bonds is often very thin, nevertheless, the distinction is real and substantial, and if overlooked, will result in miscarriage of justice. To constitute common intention, it is necessary that intention of each one of them be known to the rest of them and shared by them. Undoubtedly, it is a difficult thing to prove even the intention of an individual and, therefore, it is all the more difficult to show the common intention of a group of persons. But however difficult may be the task, the prosecution must lead evidence of facts, circumstances and conduct of the accused from which their common intention can be safely gathered. In Maqsoodan v. State of U.P. [(1983) 1 SCC 218] it was observed that prosecution must lead evidence from which the common intention of the accused can be safely gathered. In most cases it has to be inferred from the act, conduct or other relevant circumstances of*

the case in hand. The totality of the circumstances must be taken into consideration in arriving at a conclusion whether the accused had a common intention to commit offence for which they can be convicted. The facts and circumstances of cases vary and each case has to be decided keeping in view the facts involved. Whether an act is in furtherance of the common intention is an incident of fact and not of law. In Bhaba Nanda Sarma v. State of Assam [(1977) 4 SCC 396] it was observed that prosecution must prove facts to justify an inference that all participants of the acts had shared a common intention to commit the criminal act which was finally committed by one or more of the participants. Mere presence of a person at the time of commission of an offence by his confederates is not, in itself sufficient to bring his case within the purview of Section 34, unless community of design is proved against him. [Malkhan Singh v. State of U.P. (1975) 3 SCC 311] In the Oxford English Dictionary, the word "furtherance" is defined as "action of helping forward". Adopting this definition, Russell says that "it indicates some kind of aid or assistance producing an effect in future" and adds that any act may be regarded as done in furtherance of the ultimate felony if it is a step intentionally taken, for the purpose of effecting that felony. (Russell on Crime, 12th Edn., Vol. I, pp. 487 and 488.) In Shankarlal Kacharabhai v. State of Gujarat [AIR 1965 SC 1260] this Court has interpreted the word "furtherance" as "advancement or promotion".

26) In the case of *Suresh -Vs- State of U.P.*, reported in (2001) 3 SCC 673, a three Judge Bench of the Hon'ble Supreme Court with regard to Section 34 IPC have held as follows:

"38. Section 34 of the Indian Penal Code recognises the principle of vicarious liability in criminal jurisprudence. It makes a person liable for action of an offence not committed by him but by another person with whom he shared the common intention. It is a rule of evidence and does not create a substantive offence. The section gives statutory recognition to the commonsense principle that if more than two persons intentionally do a thing jointly, it is just the same as if each of them had done it individually. There is no gainsaying that a common intention presupposes prior concert, which requires a prearranged plan of the accused participating in an offence. Such preconcert or preplanning may develop on the spot or during the course of commission of the offence but the crucial test is that such plan must precede the act constituting an offence. Common intention can be formed previously or in the course of occurrence and on the spur of the moment. The existence of a common intention is a question of fact in each case to be proved mainly as a matter of inference from the circumstances of the case.

39. The dominant feature for attracting Section 34 of the Indian Penal Code (hereinafter referred to as "the Code") is the element of participation in absence

resulting in the ultimate "criminal act". The "act" referred to in the later part of Section 34 means the ultimate criminal act with which the accused is charged of sharing the common intention. The accused is, therefore, made responsible for the ultimate criminal act done by several persons in furtherance of the common intention of all. The section does not envisage the separate act by all the accused persons for becoming responsible for the ultimate criminal act. If such an interpretation is accepted, the purpose of Section 34 shall be rendered infructuous.

40. Participation in the crime in furtherance of the common intention cannot conceive of some independent criminal act by all accused persons, besides the ultimate criminal act because for that individual act law takes care of making such accused responsible under the other provisions of the Code. The word "act" used in Section 34 denotes a series of acts as a single act. What is required under law is that the accused persons sharing the common intention must be physically present at the scene of occurrence and be shown not to have dissuaded themselves from the intended criminal act for which they shared the common intention. Culpability under Section 34 cannot be excluded by mere distance from the scene of occurrence. The presumption of constructive intention, however, has to be arrived at only when the court can, with judicial servitude, hold that the accused must have preconceived the result that ensued in furtherance of the common intention. A Division Bench of the Patna High Court in *Satrughan Patar v. Emperor* [AIR 1919 PAT 111] held that it is only when a court with some certainty holds that a particular accused must have preconceived or premeditated the result which ensued or acted in concert with others in order to bring about that result, that Section 34 may be applied.

53. For appreciating the ambit and scope of Section 34, the preceding Sections 32 and 33 have always to be kept in mind. Under Section 32 acts include illegal omissions. Section 33 defines the "act" to mean as well a series of acts as a single act and the word "omission" denotes as well a series of omissions as a single omission. The distinction between a "common intention" and a "similar intention" which is real and substantial is also not to be lost sight of. The common intention implies a prearranged plan but in a given case it may develop on the spur of the moment in the course of the commission of the offence. Such common intention which developed on the spur of the moment is different from the similar intention actuated by a number of persons at the same time. The distinction between "common intention" and "similar intention" may be fine but is nonetheless a real one and if overlooked may lead to miscarriage of justice.

54. After referring to *Mahbub Shah* case [AIR 1945 PC 118] this Court in *Mohan Singh v. State of Punjab* [AIR 1963 SC 174] observed, it is now well settled that the common intention required by Section 34 is different from the same intention or similar intention. The persons having similar intention which is not the result of preconcerted plan cannot be held guilty for the "criminal act" with the aid of

Section 34. Similarly the distinction of the words used in Section 10 of the Indian Evidence Act "in reference to their common intention" and the words used in Section 34 "in furtherance of the common intention" is significant. Whereas Section 10 of the Indian Evidence Act deals with the actions done by conspirators in reference to the common object, Section 34 of the Code deals with persons having common intention to do a criminal act."

27) The essential ingredients of the offence under Section 34 IPC are –

- (i) That the criminal act was done by more than one person.*
- (ii) There must be a meeting of all the accused prior to the commission of the offence.*
- (iii) All the accused must have participated in the said meeting intended to commit the offences.*
- (iv) There must be common intention of offence.*
- (v) There must be participation in commission of offence.*
- (vi) Criminal act must have been committed in furtherance of their common intention.*

28) We have also observed from the evidence adduced by the prosecution that except the act of chasing of said Uttam Kahar, the deceased and about his sudden appearance during the assault on the said deceased by the accused Paresh Mura; the prosecution failed to prove that it is the accused Benu Mura who also assaulted the deceased Uttam Kahar that too by any arms or that he along with the other accused Paresh Mura threw the deceased Uttam Kahar in drain. Moreover, PW 3, the independent witness in his evidence clearly deposed that while the accused Paresh Mura was assaulting Uttam Kahar by a big lathi, suddenly Benu Mura appeared in the spot. It is also observed that though evidence of chasing of said deceased Uttam Kahar by the accused persons Paresh Mura and Benu Mura was proved, but it is only PWs 1 and 2 i.e. mother and sister of the deceased respectively, who are interested witnesses, submitted that both the accused persons chased the deceased armed with lathi and dao. But PW 3 and 5 are being independent witnesses and PW 4, wife of the deceased in their evidence before the Trial Court did not state that the accused Benu Mura had any arm with him or that the deceased was chased by said accused person Benu Mura with arms lathi and dao.

29) Going through the evidence recorded by the learned Trial Court and the decision of the Hon'ble Supreme Court noted above, we are of the opinion that the prosecution successfully could not show that the alleged criminal act complained against was done by the accused Benu Mura in the furtherance of common intention with the other accused Paresh Mura. Moreover, the prosecution also failed to show about the meeting of minds of the appellant Benu Mura with the accused Paresh Mura with regard to inflicting of injuries on said Uttam Kahar, the deceased by the other accused Paresh Mura.

30) In a criminal case, it is well settled that Court should go for strict proof of evidence on the face of which the accused can be connected with the offence like murder. From the discussions made herein above, we are of the view that the prosecution has failed to lead any cogent and reliable evidence with regard to the guilt of the appellant Benu Mura beyond all reasonable doubt and therefore, we are of the opinion that the accused appellant should be given the benefit of doubt.

31) Accordingly, the impugned judgment of conviction and sentence dated 03.08.30013 passed by the learned Additional Sessions Judge, (FTC), Cachar Silchar in Sessions Case No. 234/2010, arising out of Lakhipur PS Case No. 114/2010 under Section 302/34 IPC with regard to the appellant Benu Mura is hereby set aside and quashed and he is acquitted from the charges levelled against him in the said case and is directed to be released forthwith, if not required in any other case.

32) Registry shall inform the Superintendent of Central Jail, Cachar, Silchar to release the accused appellant Benu Mura forthwith in the above noted Sessions Case No. 234/2010, arising out of Lakhipur PS Case No. 114/2010, if not required in any other case and he shall be served with a copy of this Judgment.

33) Before parting with the case, we acknowledge the assistance rendered by both, the learned Amicus Curiae of this case Ms. Bijita Sarma as well as Mr. Nava Kumar Kalita, learned Additional Public Prosecutor, Assam for the State. direct The

State Legal Services Authority, Assam is hereby directed to pay a sum of Rs. 7,000/- to Ms. Bijita Sarma towards her remuneration.

34) Registry shall send down the records along with copy of the Judgment. A copy of this Judgment be also furnished to the accused appellant Paresh Mura through the Superintendent, Central Jail, Silchar.

35) Accordingly, this appeal is partly allowed, to the extent above.

JUDGE

JUDGE

Pratibha