

State Vs. Hetep Boro and ors.

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Court : Guwahati

Decided On : Nov-12-1971

Judge : P.K. Goswami, C.J. and M.C. Pathak, J.

Appellant : State

Respondent : Hetep Boro and ors.

Judgement :

M.C. Pathak, J.

1. Criminal Appeal No. 32(J)/68 and Government Criminal Appeal No. 13/68 are directed against the order of conviction and sentence and the order of acquittal respectively passed in Sessions Case No. 41 (K) of 1967. Altogether 51 persons were charged under Section 400, Indian Penal Code and tried by the learned Sessions Judge Goalpara. Out of them the case against 1 was given up by prosecution, 16 were convicted and 34 were acquitted. The 16 persons who were convicted and sentenced, have referred Criminal Appeal No. 32(J)/68 from the jail. The State Government has preferred Government Criminal Appeal No. 13/68 against the order of acquittal of the 34 accused persons.

2. In Government Criminal Appeal No. 13/68, Mr. S. N. Bhuyan the learned counsel, has appeared on behalf of 6 Respondents, that is Respondents 14, 23, 25, 27 29 and 30.

3. The prosecution case, in brief, was that the accused persons belonged to a gang associated for the purpose of habitually committing dacoities in, the districts of Goalpara, Kamrup. Nowgong, Darrang and Lakhimpur during the period from 1961 to 1966. During the said period there were series of dacoities in the said districts. In many of these dacoities guns were used by the dacoits and in several cases guns were looted from the houses where dacoities were committed. In most cases the inmates of the houses where dacoities were committed, were brutally assaulted and tortured and in some cases some persons were killed. The dacoits selected persons having guns and committed dacoities in their houses and took away the arms and ammunitions. In some cases they all of a sudden stormed the houses of the victims, frightened them by gun firing and then decamped with booties. In some cases they created artificial alarm by freeing the cattle from the cowshed or throwing stones on C, I. sheet roofs and when the inmates opened their doors to see what the matter was, the dacoits rushed into the houses, tied them and tortured them and took away the properties.

Most of these cases were reported to the nearest Police Stations in due time and cases were registered. Some cases remained also unreported either due to fear of the dacoits or for some other reasons. In some cases some members of the gang including the leader Karmalal Brahma were arrested. 14 accused persons, namely, (1) Karmalal Brahma (2) Kamaleswar Musahari (3) Sukhram Boro (4) Daniel Basumatari (5) Sabin Boro (6) Rebang Boro (7) Girish alias Giricharan (8) Tilak alias Thilao (9) Loken Gayari (10) Lakhiram alias Maldang (11) Kailash Brahma (12) Jogen Boro (13) Jetmon Boro and (14) Gokul made confessional statements before Magistrates, The statements of some of these accused particularly, those of accused Karmalal Brahma, Kamaleswar Musahari and Daniel Basumatari disclosed that the gang of dacoits consisting of about 70 persons had been operating in the districts of Goalpara Kamrup Darrang, Nowgong and Lakhimpur under the leadership of Karmalal Brahma and that the gang was responsible for about 52 dacoities committed in the said districts during the period from 1961 to 1966. Of these 52 cases, 10 were armed dacoities 2 dacoities were with rape, 1 was dacoity with murder and the rest were dacoities with grievous or simple hurts.

The confessional statement of accused Karmalal recorded by the Magistrate gave a description as to how and when the gang was formed, how he came to be the leader of the gang, who were the members of the gang, how the gang operated and also about the specific cases of dacoities committed by the members of the gang. He disclosed in his statement that the gang was in existence from about 1960 and it was initially led by accused Anil and Khitish. Under the leadership of Anil and Khitish, Karmalal committed about 6 dacoities. Anil and Khitish were convicted in a dacoity case in 1961 and sentenced to imprisonment for 5 years. During the period Karmalal was imprisoned for one year in a case of attempting to commit murder and he met accused Anil and Khitish in Dhubri Jail. Anil and Khitish advised him to meet Daniel at Runikhata after his release and re-organise the gang in consultation with him. Accordingly after his release Karmalal came out and met Daniel at Runikhata and in collaboration with him reorganised the gang. After the gang was reorganised by Karmalal, it committed 46 dacoities in different districts in different groups. Karmalal himself took part in as many as 36 dacoities. The statement of Karmalal was locally verified by different Magistrates in different districts. The Magistrates were led by Karmalal to the house where dacoities were said to have been committed and on enquiry the Magistrates found that actually dacoities were committed in those houses.

4. Taking the cue from the statements of Karmalal and other confessing accused persons, P.S. Sarma. Officer-in-charge of Kokrajhar Police Station lodged a formal First Information Report at the Police Station on 15-9-1966 and registered a case under Section 400, Indian Penal Code. The investigation was taken up by Inspector Kabil Ali of C. I D. Branch as directed by the Deputy Inspector General of Police C. I. D. Shillong. On completion of investigation, charge sheet was submitted against 60 accused persons under Section 400, Indian Penal Code,

5. During the enquiry accused Karmalal Brahma and Kamaleswar Musahari were granted pardon under Section 337 (1) of the Code of Criminal Procedure by the Sub-Divisional Magistrate, Kokrajhar and they were made approvers. The Committal Magistrate charged 51 accused persons under Section 400, Indian Penal Code and committed them to take their trial before the Sessions Court and the remaining accused were discharged.

6. All the accused persons pleaded not guilty to the charge. Their plea was that of denial. According to defence the two approvers in order to save themselves from punishment for their crimes had given false evidence against them as tutored by police. The confessional statements of 12 accused persons relied upon by the prosecution were all retracted and according to defence these were extorted by police under threat and coercion.

7. The prosecution examined 170 witnesses including the two approvers Karmalal P. W. 1 and Kamaleswar P. W. 2. Besides the oral evidence of the P. W. s. the prosecution proved a number of documents which include the First Information Reports in different dacoity cases, judicial and extra-judicial confessions made by some of the accused persons, seizure lists relating to seizure of various articles in different cases, verification reports of the Magistrates and other documents. These were marked as Exts. 1 to 139. Some material objects were also produced and exhibited and these were marked as Exts. I to XV

8. The defence did not adduce any evidence in the case. On consideration of the evidence on record the learned Sessions Judge convicted the following 16 persons under Section 400 Indian Penal Code, who are appellants in Criminal Appeal No. 32(J)/68, viz. (1) Rebang Basumatari (2) Daniel Basumatari (3) Tilok alias Thilao Boro (4) Loken Boro alias Loken Gayari (5) Girish alias Giricharan Boro (6) Lakhiram alias Maldang Boro (7) Jetmon alias Jermon Boro (8) Sukhram Boro (9) Sobin Boro (10) Kailash Brahma (11) Jogen Boro (12) Lekharam Najrari alias Kana alias Jana (13) Nagen Boro alias Naren Boro (14) Raghu Boro (15) Gokul Boro and (16) Bijoy Master alias Ganesh Master.

9. Of these convicted persons accused Rebang Daniel, Tilok, Giricharan alias Girish, Lakhiram alias Maldang, Jetmon, Sukhram, Lekharam alias Kana, Nagen and Bijoy Master have been sentenced to rigorous imprisonment for ten years each and the remaining six accused, namely, Loken Gayari, Sobin Boro, Kailash Brahma, Jogen Boro, Raghu Boro and Gokul Boro have been sentenced to rigorous imprisonment for 5 years each. The remaining 34 accused persons were found not guilty by the learned Sessions Judge and were acquitted, who are Respondents in Government Criminal Appeal No. 13/68.

10. Respondent No. 13 Makhna Boro and Respondent No. 26 Ravan alias Ramenda Boro alias Gopal Boro are absconding and by Court's order dated 1-3-1971 the appeal against the Respondent Nos. 13 and 26 was split up and the appeal is heard against the other Respondents.

11. The prosecution case mainly rests on the evidence of two approvers, namely, P. W. 1, Karmalal Brahma and P. W. 2 Kamaleswar Musahari. The other evidences in the case are generally in corroboration of the evidence of the approvers.

12. The first point to be considered in the instant case is whether the evidence of P. Ws. 1 and 2 is at all reliable apart from the question of corroboration. In other words we have first to examine whether apart from the question of corroboration there is any intrinsic infirmity in the evidence of P. Ws. 1 and 2, which may make their evidence totally unreliable. If it is found that their evidence does not consist of any inherent infirmity, then it will be necessary to consider whether there are material corroborations to their evidence as required under the law.

13. The evidence of P. W. 1 is briefly as follows: P. W. 1 was initiated into dacoity by his wife's younger brother accused Ramani about 7 years ago, P. W. 1 knows all the 51 accused persons who were members of a gang of dacoits. The gang was formed about 6 or 7 years ago and it was in existence since before he joined it about 4 or 6 years ago. Accused Anil and Khitish led the gang before P. W. 1 joined it. Under their leadership 6 dacoities were committed by P. W. 1 along with others; these were committed at Runikhata, Basmarigaon, North Bongaigaon Debarbeel Dangarkhuti and Daukanagar.

14. Thereafter P. W. 1 was convicted in a case for attempting to commit murder and was sentenced to rigorous imprisonment for one year. Accused Anil and Khitish were also convicted in a dacoity case and sentenced to rigorous imprisonment for 5 years. P. W. 1 met Anil and Khitish in Dhubri Jail, where all of them were serving their sentences. Before his release, P. W. 1 was instructed by Anil and Khitish to meet Daniel at Runikhata and re-organise the gang of dacoits. Accordingly after his release P. W. 1 met Daniel, who introduced to him Rebang Ranjon Tilok alias Thilao, Rabi, Hetep alias Umacharan. Bisram and Suren.

Thereafter, P. W. 1 reorganised the gang and took upon himself the leadership. They opened a camp at Champa Reserve where he and accused Rebang generally used to stay. The other persons used to visit the camp occasionally. In the meantime some other persons joined them, such as. Loken, Nagen, Bhaben, Sagor and some others. To facilitate commission of dacoities at different places they opened camps at some other places, such as Runikhata, Gerubhasa, Khagrabari, Banglatola in Goalpara District, Kuthori and Kajiranga in Nowgong and Sibsagar districts respectively, Harichinga and Molanpukhuri in Darrang District and Gogamukh in North Lakhimpur Sub-Division. The members of the gang were kept divided in different camps to avoid police and for the sake of convenience of commission of dacoities at different places. After his release from jail and reorganisation of the gang, P. W. 1 became the leader and P. W. 2 became the second-in-command. P. W. 1 took part in as many as 35 dacoities with different persons of the gang at different places and times after his release from jail serving imprisonment for one year and till he was arrested in 1965. He has named and identified all the accused except accused Saimakhanda as members of the gang which was led by him. He described dacoities committed by him at different places with some details and he also gave the names of other dacoits who accompanied him in those dacoities.

15. From the description given by P. W. 1 about the dacoities committed by him and his associates a clear picture of the modus operandi of the gang is found. P. W. 1 also has described in details the manner of the dacoities, the persons who took part in committing different dacoities and the properties looted from the respective houses. P. W. 1 along with his associates committed dacoities at Dighaldang Udalguri basti. Hasrabari Ultapani Labyanpur Dhopgur, Karigaon Amguri Lotagaon, Tilapara, Dangarkhuti Balaguri Palasguri Bardangi Asrabari Gos-saingaon Padambeel Jharbari Santipur Sialmari, Langdangpara, Lotagaon, near Dhaligaon, Kakarmari, Mod.ati, Burijhar and Gosaingaon in the district of Goalpara. The gang also committed dacoity at Gelappo in Bhutan Border, at Majlihar in Kamrup district, near North Lakhimpur town at Bihpuria Station and some other place in North Lakhimpur Sub-Division, at Bamumigaon and Salana in Nowgong District and at Jharbari and at a place near Jharbari in Darrang District.

16. P. W. 1 has in his deposition given details regarding these dacoities, such as, the persons in whose houses dacoities were committed, the nature of the properties looted and the persons of the gang who took part in the respective dacoities.

17. It was stated that in the dacoity committed at Labyanapur-Ultapani in the house of a Nepali, P. W. 1's associate Khargabahadur was badly injured and P. W. 1 received injury in his left hand with a khukri caused by a female inmate of the house. Khargabahadur died of the injury while escaping. In the dacoity at Dangarkhuti in the house of Robi Mahajan the dacoits looted one gun, Rs. 7000/- in G. C. Notes and Rs. 500/- in coins and some gold ornaments and a wrist watch. In the dacoity at Burijhar the dacoits took away one gun which was kept with P. W. 1 and it was used in committing several other dacoities till it was seized by police after his arrest.

18. In the dacoity at Gossaigaon Padambeel the dacoits took away Rupees 11,000/- one DBBL gun and some cartridges. It was stated by P. W. 1 that in the dacoity committed at Sialmari Bijoy Master had one D. B. B. L. gun. In that dacoity one dacoit, namely Hoklo was badly injured by the owner of the house, namely. Salkan Soren. After commission of the dacoity Hoklo was carried by his associates upto river Hell. But since Hoklo was badly injured, he could not be carried further and therefore P. W. 1 ordered Salamuddin to kill Hoklo and accordingly Salamuddin killed Hoklo with his gun. The dead body of Hoklo was buried near the river Hell. One table clock was looted from the house of Salkan Soren, which was later sold to a man of Mahendrapur No. 1. The clock was later identified as Ext. II. The dacoity at Modati was committed in the house of one Baijnath Hembrom. When the dacoits left with the booty Baijnath was threatened by Loken with the gun of P. W. 1. In all the dacoities the dacoits assaulted the inmates of the houses.

19. The evidence of P. W. 1 is fairly long covering about 24 pages and full of details of a large number of dacoities in which P. W. 1 took part. On a careful consideration of the evidence of P. W. 1 it cannot be said that he deposed from his imagination or as tutored by police. Unless he had personal knowledge it would not be possible for P. W. 1 to give details of so many dacoities at so many places

in different houses of different persons residing in different districts of Assam. In the circumstances we find that there is no inherent improbability in the evidence of P. W. 1 for which it may be brushed aside. His evidence may be relied upon provided there are corroborations as required under the law.

20. P. W. 2 Kamaleswar has substantially corroborated the evidence of P. W. 1. He stated that he knew the accused persons who belonged to their gang of which P. W. 1 Karmalal was the leader. In absence of Karmalal he used to lead the gang. The gang was formed about 7 years ago. Before Karmalal took over charge, Anil and Khitish led the gang. The gang was engaged in commission of dacoity at various places in Goalpara Kamrup, Nowgong Lakhimpur and Darrang Districts. The gang consisted of about 60/70 members. They used to commit dacoity by forming groups of 10/15 persons. The headquarter of the gang was at Kokrajhar. They had camps at Champamati forest, Geru-bhasa, Runikhata, Dangtola, Bongaigaon, Khagrabari and Banglatola. They used to divide the booty equally among themselves. If any member was arrested in any specific case the defence expenditure was borne by the arrested member himself. That was according to the arrangement made. He stated that the gang operated under the leadership of accused Anil and Khitish since before 1961. He joined the gang sometime in 1961. In 1961 he committed 3 dacoities one at Debarbeel in the house of Uga Boro, one at Dahalapara in the house of Rabiram Mahajan and the third one at Daukanagar in the house of Sha Mohammed. The dacoity at Debarbeel was committed by P. W. 2 along with accused Karmalal, Saimakhanda, Dhaniram, Kailas and two others. The dacoities at Dahalapara and Daukanagar were committed by him along with accused Karmalal Kailash Dhaniram, Salamuddin and another.

After these dacoities accused Anil and Khitish were arrested by police and in one case they were convicted and sentenced to imprisonment for some years. Accused Karmalal was also convicted in a case and sentenced to imprisonment. After the arrest of these persons the gang became inactive. After coming out of jail Karmalal met P. W. 2 at Gerubhasa bazar and planned to reorganise the gang. Accordingly the members of the gang were contacted and it was reorganised. Karmalal P. W. 1 became the leader and P. W. 2 became the second-incommand. P. W. 2 stated that he committed about 12 dacoities after the gang was

reorganised. He deposed about 9 such dacoities in detail and gave the names of the persons who took part in the dacoities along with him. These dacoities were committed at Dangarkhuti in the house of Rabiram Mahajan, at Tilapara in the house of Sadhu Mahilari at Padambeel in the house of Bishu Ray, at Modati in the house of Baijnath, at Kakarmari. in the house of Binaram Mahajan at Chara-guri in the house of Sarbeswar Roy, at Charaibeel in the house of one Saotal at Galappo in Bhutan border in the house of one Nepali Sadhu and at Tamulpur in the house of one Boro. P. W. 2 has stated the names of the persons who took part in the above dacoities. P. W. 2 has named and identified all the accused persons except Saimakhanda as the persons belonging to the gang. On a careful consideration of the evidence of P. W. 2 we do not find that his long deposition made before the Court is a falsely concocted story or tutored by police. There is no inherent infirmity in his evidence also.

21. Both P. Ws. 1 and 2 have stated that all the accused persons except Saimakhanda were members of the gang and they participated in groups in various dacoities committed in different districts. Both P. Ws. 1 and 2 have implicated themselves as participants along with the other accused in the dacoities described by them. P. W, 1 has narrated in some details 42 dacoities committed by him along with other members of the gang at different places and on different occasions. P. W. 2 also has given details of about 12 dacoities committed by him along with others since 1961 till his arrest in 1966. On consideration of the evidence of these two witnesses, it is found that the accused persons formed a gang for the purpose of habitually committing dacoities and most of them took part in more than one dacoity.

22. The next question is how far the evidence of P, Ws. 1 and 2, the two approvers is reliable. For this purpose we have to see whether their evidence is materially corroborated by other evidence on record.

23. The following 12 accused persons made confessional statements in connection with different cases before different Magistrates:(1) Sukhram Boro (2) Daniel Basumatari (3) Sabin Boro (4) Rebang alias Jaila (5) Girish alias Giricharan (6) Tilok alias Thilao (7) Loken Gayari (8) Lakhiram alias Maldang (9) Kailash

Brahma (10) Jogen Boro (11) Jetmon Boro and (12) Gokul Boro.

24. P. W. 146 Shri A. S. Sarkar, Magistrate at Kokrajhar recorded the confessional statement of accused Sukhram Sabin Boro Rebang Tilok and Jogen on different dates. He has proved the statements which are Exts. 96 95. 92, 93 and 90 respectively P. W. 146 also recorded the confessional statement of accused Girish on two different dates which are Exts 91 and 94.

25. P. W. 148 Shri D. M. Goswami Magistrate at Tezpur recorded the confessional statement of accused Daniel which is Ext. 97. P. W, 148 stated that accused Daniel after recording of his statement wrote out a detailed statement which is Ext, 98.

26. P. W. 144 Shri P.C. Mahanta Magistrate Kokrajhar recorded the confessional statement of accused Loken Gayari which is Ext. 88.

27. P. W. 145 Shri P.C. Barthakur Magistrate, Kokrajhar recorded the statement of accused Loken Gayari which is Ext 89. P. W. 141 Shri D. C. Pathak, Magistrate, Kokrajhar recorded the confessional statement of accused Jetmon Boro which is Ext. 86. P. W. 149 Shri S. P. Hazarika, Magistrate, Kokrajhar recorded the confessional statement of accused Kailash which is Ext, 101. Shri R. Ahmed, Magistrate, who recorded the confessional statement of accused Lakhiram alias Maldang and Gokul was not available at the time of trial for his evidence and so their statements were put in evidence under Section 80 of the Evidence Act and marked as Exts 127 and 128 respectively.

28. The abovementioned Magistrates in their evidence stated that before recording the confessional statements the accused persons were given due caution and warning and were given sufficient time for reflection. No police personnel were allowed to remain in the Court rooms where the accused were kept for recording their statements. None of the accused persons complained of any ill-treatment or threat or coercion by police before the Magistrate. On questioning the accused, the Magistrates found that the accused were willing to make the statements voluntarily. The Magistrates were satisfied from the answer of the accused that the statements were voluntary. From the remarks recorded by the Magistrate in the

confessional statements of Lakhiram and Gokul it is found that the necessary formalities were duly observed and the Magistrate was satisfied that the accused made the statements voluntarily. On consideration of the confessional statements of the said accused person and the evidence of the Magistrate concerned we are satisfied that the confessional statements were made voluntarily and the learned Sessions Judge correctly held so.

29. Accused Sukhram Jogen and Tilok implicated themselves in one dacoity which was said to be committed at Burihar corresponding to the case mentioned in First Information Report Ext. 37. Accused Daniel implicated himself in his confessional statement in six dacoities, four of which were in North Lakhim-pur Sub-Division and two in Nowgong District, These dacoities were reported in F.I.R.'s Exts. 43, 46, 47. 44, 41 and 42. All these cases were under Section 395, Indian Penal Code. Accused Sabin implicated himself in his confessional statement in one dacoity committed at Dangarkhuti. Accused Rebang implicated himself in 3 dacoities at Burihar, Asra-bari and Aminpara, the first and third were reported in F.I.R.'s Exts. 37 and 103. Accused Girish implicated himself in two dacoities committed at Burihar and Padambeel, which correspond to the cases reported in F.I.R.'s Exts. 37 and 13. Accused Loken Gayari in his confessional statements, Exts. 88 and 89 implicated himself in dacoities at Kakar-mari, Aminpara, Gaubari and Saraguri, which were reported in F.I.R.'s Exts 13, 11, 36 and 103 respectively. Accused Lakhiram implicated himself in two dacoities at Dighaldong and Dangarkhuti corresponding to the cases reported in F.I.R.'s Exts 51 and 12. Accused Kailash implicated himself in four dacoities committed at Debarbeel, Dahalapara. Dauka-nagar and Mejbari The dacoities at Debarbeel and Dahalapara were reported in F.I.R.'s Exts 59 and 38. These cases were under Section 394, Indian Penal Code. Accused Jetmon implicated himself in two dacoities at Dangarkhuti and Kakarmari corresponding to cases reported in F.I.R.'s Exts 12 and 29. Accused Gokul Boro implicated himself in two dacoities committed at Modati and Dangarkhuti corresponding to the cases reported in F.I.R.'s Exts. 7 and 12.

30. The evidence of P. Ws. 1 and 2 discloses that the aforesaid confessing accused persons took part in some of the dacoities. The confessional statements

of these accused persons corroborate the evidence of P. Ws. 1 and 2 regarding the existence of the gang and participation of these accused.

31. Considering the nature of the evidence regarding the extrajudicial confessions the learned Sessions Judge has refused to place any reliance on them and we also do not propose to take them into consideration in appreciating the evidence against the accused persons.

32. The evidence of P. Ws. 1 and 2 with regard to the dacoities committed by the gang at different places has been corroborated by the evidence of the persons in whose houses the dacoities were committed or persons of the locality who knew about them. The prosecution has proved the F.I.R.'s of all these cases. The learned Sessions Judge in his judgment has given a chart showing the names of the places at which the dacoities took place, the dates of occurrence, the names of the informants, numbers of the Police Station cases etc. From the evidence on record is found that most of the persons in whose houses the dacoities were committed were examined by prosecution to prove the occurrences and the ejahars. The occurrences regarding the dacoities mentioned in the depositions of P. Ws. 1 and 2 are substantially corroborated by the evidence of the first informants, who have been examined in the instant case by prosecution.

33. In some dacoities committed by the gang a number of guns were looted. Six of these guns were subsequently recovered by police and these were identified by the respective owners and marked as material Exts Nos. VIII X VII XVII, IX and XV. The guns so looted belonged to Rabiram Brahma, Bishu Rai, Mohendra Hajawari, Singha Boro, Borobotha Mahajan and Maheswar Munda. P. W. 1 stated that they looted the said guns from the owners while committing the dacoities in their respective houses. P. W, 1 stated that he looted a gun from the house of Rabiram at Dangarkhuti and kept it concealed under a stack of timber at Kokrajhar Timber Depot and it was subsequently found missing. His evidence has been corroborated by the evidence of P. W. 30 Rabiram and P. W. 130 Inspector P. R. Choudhury. P. W. 1 stated that the gun Ext. IX looted from the house Borobotha Mahaian of Asrabari was sold to one Balendra Narjari of Mahendrapur. P. W. 155 A.S.I. Kalicharan Boro stated that he had seized the gun Ext. IX from the house of

Balendra Narjari under seizure list Ext. 108. P. W. 31 Borobotha identified the gun and stated that it was stolen during the dacoity committed in his house. Similarly the gun Ext. X taken from the house of Bishu Rai of Padambeel the gun Ext. VII taken from the house of Mahendra Hajawari of Burijhar were identified by respective owners.

34. P. W. 1 stated that while committing dacoity in the house of a Nepali at Ultapani a female inmate of the house caused injury to his left thumb with a Khukri and that one of his associates viz. Khargabahadur was injured by same woman with a khukri and he later died on the way and his dead body was left buried. These facts were substantially corroborated by P. W. 53 Bhakta Bahadur Gelay.

35. P. W. 1 stated that during the commission of dacoity in the house of Binaram Mahaian at Kakarmari, he was severely assaulted by breaking his leg. P. W. 48 Binaram corroborated this fact in his evidence.

36. P. W. 1 stated that during the commission of the dacoity in the house of Balkan Soren of Sialmari one of their associates namely Hoklo was severely injured by Salkan with his sword and that he was somehow carried on a 'changgi' upto the river Hell where he was killed by Salamuddin under his order. P. W. 24 Salkan stated in his evidence that he injured one dacoit with a sword and he saw blood mark leading from his house upto the river Hell. P. W. 25 also corroborated this fact in his evidence.

37. Several other facts also appearing in the evidence of P. Ws. 1 and 2 are substantially corroborated by the evidence of other relevant P. Ws. Some of the accused persons were mentioned in the F. I. Rs. lodged in connection with different dacoities for example, accused Loken was mentioned in Ext. 87, accused Gokul in Ext. 7 accused Rebang in Exts. 103 and 78, accused Lakhiram Narjari Tilok and Anil in Ext. 78 and accused Koren in Ext. 66.

38. A large number of witnesses from different localities have been examined in the instant case to prove the habit reputation and association of the accused persons. They are P. Ws. 2, 4 to 8, 10 to 18, 20 to 22 37 to 42, 49 to 52, 62, 63 71 to 73, 75, 77, 78, 87, 94. 96, 99, 112 to 115, 120 and 126. These witnesses have

deposed that the accused persons are generally known as dacoits in the locality. that they move about in groups in suspicious manner. After a day or two of report of some dacoities committed in nearby villages these persons were seen moving in groups. The accused persons are stated to have no ostensible means of livelihood, but were found to have spent lavishly. Many of these witnesses stated that when Anil and Khitish were in jail, commission of dacoities in the locality practically ceased but when they came out from jail, number of dacoities committed in the locality largely increased. P. W. 168 P.C. Sarma S. I. of Police also deposed that when Karmalal was in jail, there was no report of dacoities in the locality and that after the arrest of the accused persons the number of dacoities in the district had considerably decreased. There is nothing to disbelieve the evidence of these witnesses who are found to have held responsible positions in the society and are not in any way inimically disposed towards the accused persons.

39. The evidence on record also goes to show that some of these accused persons are bad characters and habituated to committing offences. From Ext. 129 it is found that accused Loken was convicted and sentenced to suffer rigorous imprisonment for 4 months under Section 380/75, Indian Penal Code and was bound down under Section 565, Criminal Procedure Code for one year. Accused Megho Boro was convicted under Section 309 Indian Penal Code on 3-12-1959 and sentenced to rigorous imprisonment for 3 years vide Ext. 130. Accused Isob Ali was convicted under Section 411. Indian Penal Code and sentenced to rigorous imprisonment for one month vide Ext. 131. From Exts. 132 and 133 it is found that accused Anil Brahma and Khitish Brahma were convicted under Section 412 Indian Penal Code and were sentenced to rigorous imprisonment for 5 years each on 28-8-1961. Ext. 135 shows that accused Lebra Boro was convicted under Section 395 Indian Penal Code and sentenced to rigorous imprisonment for 5 years on 28-11-1959. The accused persons admitted the above convictions in their examination under Section 342. Criminal P.C.

40. P. W. 168, S. I. P.C. Sarma stated that while arresting Karmalal P. W. 1, he recovered from his body 8 live cartridges which were kept in a bag tied to his waist wrapped with a Gamocha and these were seized vide seizure list Ext. 4. The

cartridges have been marked as material Ext. IV. P. W, 168 further stated that Karmalal led them to a place at a distance of 1 1/2 mile from the place of arrest and took out one gun Ext. VII which was kept inside a rubber bag in their presence. The gun was later identified as material Ext. VII, by P. W. 84 Mahendra Hajawari P. Ws. 11 and 12 corroborated the evidence of P, W. 168 in this respect. P. W. 1 in his evidence stated that he took one table clock from the house of one Salkan Soren of Sialmari and he sold the clock to a man of Mahendrapur No. 1 P. W. 158 S. I. Debicharan Kachari deposed that he seized the clock from the house of one Gandheswar Basumatari of Mohendrapur on 6-3-1966 under seizure list Ext. 114. P W 24 Salkan Soren identified the clock Ext. II.

41. The evidence discussed above clearly shows that Karmalal himself took part in the dacoities mentioned by him. The evidence on record leaves no doubt regarding the complicity of Karmalal P. W. 1 in the crimes.

42. The learned Sessions Judge has held that there is no evidence on record to corroborate the evidence of P. W. 2 Kamaleswar regarding his complicity in any of the crimes. On a careful consideration of the evidence of P. W. 2 and the other evidence on record we are however, unable to accept this finding of the learned Sessions Judge. P. W. 2 stated that after reorganisation of the gang he along with others committed dacoity in the house of Rabiram Mahajan of Dangarkhuti. They got about Rs 8,500/- and some gold ornaments and clothes after assaulting some of the inmates of the house. They also took away the gun and some cartridges belonging to Rabiram Mahajan. Rabiram is P. W. 32. He stated that there was a dacoity in his house at Dangarkhuti about 3 years ago on a Monday. Some 10 to 12 dacoits came in a body and started assaulting them at about 7 p. m. They all ran away out of fear and heard some sounds of gun fire. After some time when he returned with some villagers he found that the dacoits had already left. He found that the dacoits took away cash amounting to rupees more than 7,000/- and clothes and ornaments. One gun was also taken away by the dacoits. Ext VIII was the stolen gun.

Thereafter he lodged F.I.R. at Kokrajhar Police Station which is Ext. 12. Ext, 12 corroborates the statement of P. W, 32. P. W. 2 stated that he along with others

committed a dacoity at Padambeel in the house of one Bishu Rai. They looted Rs. 11,000/- and some gold ornaments in this dacoity. They also removed the gun of Bishu Rai. Girish took the cover of the gun and Karmalal and Bijoy Master took the gun. Bishu Rai is P. W. 36. He has deposed that there was a dacoity in his house about 3 years ago in an Amabashya night. The dacoits came and assaulted them. He ran away towards the Police Station which is about 3 or 4 furlongs from his place. He informed the police who came running with him to the place of occurrence. In the meantime the dacoits decamped with his gun, cash amounting to rupees 14,000/-and some ornaments. Thereafter he lodged ejahar Ext. 13 which corroborates his evidence. The gun taken was D. B. B. L. gun No. 05784 Ext. X is the gun corroborates his evidence. P. W, 2 admitted that at the time of his deposition 12 cases including the murder case of Kamrup were pending against him. He made confessional statement wherein he mentioned 7 dacoities. On a consideration of the evidence of P. W. 2 and the other evidence on record we are satisfied that there is sufficient evidence to show that P. W, 2 implicated himself in a number of dacoities which is corroborated by other evidence on record. P. W. 2 stated that he committed dacoities in the house of some persons and those persons have been examined as prosecution witnesses who have testified to the facts of the dacoities committed in the manner as alleged by P. W. 2. Considering the entire evidence on the point, we are clearly of the opinion that there is sufficient evidence on record to prove the complicity of P, W. 2 in the dacoities stated to have been committed by himself along with others. The learned Sessions Judge, therefore, was not correct in leaving aside the evidence of Kamaleswar. P. W. 2 from consideration in the instant case.

43. The accused persons have been charged under Section 400. Indian Penal Code Section 400 Indian Penal Code reads as follows:

400. Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

In this case we are required to examine whether there existed a gang of persons associated for the purpose of habitually committing dacoity during the period from 1961 to 1966 operating in the districts of Goalpara Kamrup Darrang. Nowgong and Lakhimpur, and if such a gang existed whether the accused persons belonged to that gang and were associated for the purpose of habitually committing dacoity To prove the charge under Section 400. Indian Penal Code it is not necessary to prove that the accused must have taken part in any particular dacoity Evidence which though not believed for the purpose of conviction under Section 395 may yet be relied upon for the purpose of proving the charge under Section 400, Indian Penal Code

44. In a gang case under Section 400, Indian Penal Code, direct evidence of association of a particular accused with the gang may ordinarily be given only by an approver and other witnesses will speak of association on occasions immediately preceding commission of dacoity. The association and the purpose of association may be proved by direct evidence or by proof of facts from which they can reasonably be inferred Evidence that the accused persons or groups of them had been concerned in a large number of dacoities within a comparatively short space of time, may be sufficient evidence of such association.

45. We have examined the evidence of P. Ws. 1 and 2 and the other evidence on record and have found that there are sufficient material corroborations to their evidence to the fact that during the period from 1961 to 1966 there existed a gang under the leadership of P. Ws. 1 and 2 for the purpose of habitually committing dacoity. We have now to examine whether there is sufficient convincing evidence to show that the accused persons belonged to the gang associated for the purpose of habitually committing dacoities.

46. P. Ws, 1 and 2 have stated that accused Bijoy Master alias Suresh Brahma participated in 14 dacoities. The evidence of P. Ws. 1 and 2 regarding this accused gets corroboration from the evidence of P Ws 3, 5, 25, 34, 75, 77, 78, 130, 143, 154, 169 and Exts 8, 107 and material Ext. 1.

47. Accused Loken Boro alias Lokendra Gayari has been implicated in 8 dacoities by P. Ws. 1 and 2. His confessional statements are Exts 88 and 89 The evidence

of P. Ws. 101 and 102 and Exts 87, 88. 89 lend corroboration to the evidence of P. Ws. 1 and 2.

48. Accused Tilok Boro alias Thelao alias Tilok Hajari has been implicated in 25 dacoities by P. Ws. 1 and 2. His confessional statement Ext. 93 the evidence of P. Ws. 5, 6, 10, 11, 14, 16, 29, 30, 168 and Exts 78, 89 and 36 along with the evidence of P. Ws. 1 and 2 go to prove the charge against the accused.

49. P. Ws. 1 and 2 have implicated accused Rebang alias Marbang alias Jaila alias Haren Basumatari in 29 dacoities. His confessional statement is Ext. 92. The evidence of P. Ws. 1 and 2 is corroborated by the evidence of P. Ws. 5, 6, 11, 12, 20, 29. 30. 155, 168 and Exts. 78, 103 and material Exts. 7 and IX guns.

50. Lekharam Narjari alias Lakhiram has been implicated by P. Ws. 1 and 2 in 7 dacoities. The other corroborating evidence against him is that of P. Ws. 112, 126, 133, 138 and Ext. 78.

51. Nagen Boro alias Naren Boro alias Nagen Gayari has been implicated in 10 dacoities by P. Ws. 1 and 2 and the corroborating evidence is found from the evidence of P. Ws. 101 and 102 and Ext. 87.

52. Daniel Basumatari alias Dani has been implicated in 3 dacoities by P. W. 1. His confessional statements are Exts 97 and 98. The evidence of P. W. 1 gets corroboration from the evidence of P. Ws. 5, 6. 7. 9, 10, 13, 14, 17, 20, 112, 113 and Exts. 41, 46 and 47,

53. Sukhram Boro is implicated in 12 dacoities by P. Ws, 1 and 2. His confessional statement is Ext. 96. The other evidence against him is that of P. W. 41.

54. The charge against Lakhiram Basumatari alias Maldang is proved by the evidence of P. Ws. 1. 2. 20. 21. 5. 29, his confessional statement Ext 127 and Ext. 78. He has been implicated in 14 dacoities.

55. Jetmol Boro alias Jetmon alias Jetmor Boro has been implicated in 12 dacoities by P. Ws. 1 and 2 whose evidence is corroborated by his confessional statement Ext, 86 and the evidence of P. Ws. 4, 10and 21.

56. Gokul Brahma alias Naga Boro has been implicated in 4 dacoities by P. Ws. 1 and 2 whose evidence is corroborated by his confessional statement Ext. 128 and the evidence of P. Ws, 5, 10, 14 and 19 and Ext. 7.

57. Sobin Boro has been implicated in 3 dacoities by P. Ws. 1 and 2. The charge against this accused is proved by evidence of P. Ws. 1, 2 and 138 and his confessional statement Ext. 95

58. Kailash Brahma has been implicated in 5 dacoities by P. Ws. 1 and 2. The other evidence against him in his confessional statement, Ext. 101

59. Girish alias Giricharan Boro has been implicated in 11 dacoities by P. Ws. 1 and 2. The other evidence against him is his confessional statement Ext 91 and the evidence of P. Ws. 36, 84, 5, 49 and Exts. 13 and 37.

60. Accused Baghu Boro has been implicated by P. Ws. 1 and 2 in 3 dacoities. The other evidence against him are these of P. Ws. 70, 168 and Exts 62, 124 and 136 and material Ext. XVI gun.

61. Jogen Boro has been implicated in 6 dacoities by P. Ws. 1 and 2. His confessional statement is Ext. 90. The other evidence against him is that of P. W. 168.

62. On consideration of the evidence of P. Ws. 1 and 2 and other evidence on record which has materially corroborated the evidence of these two approvers, we are satisfied that the charge under Section 400, Indian Penal Code has been proved beyond reasonable doubt against accused (1) Biiroy Master (2) Loken Gayari alias Loken Boro (3) Tilok Alias Thilao Boro (4) Rebang Basumatari (5) Lekharam Nariari alias Jana (6) Nagen Boro alias Naren Boro (7) Daniel Basumatari (8) Sukhram Boro (9) Lakhiram Boro alias Maldang (10) Jetmol Boro alias Jetmon Boro alias Jermon Boro (11) Gokul Boro (12) Sobin Boro (13) Kailash Brahma (14) Girish alias Giricharan Boro (15) Raghu Boro and (16) Jogen Boro. The learned Sessions Judge has rightly convicted them under the said section, Giving due consideration to the gravity of the offence we find that the sentences are also not severe. The convictions and sentences of these accused persons

passed by the learned Sessions Judge are therefore affirmed and the Appeal No. 32(J)/68 is dismissed.

63. We have already observed that there is sufficient corroborating evidence to establish the complicity of P. W. 2 in a number of dacoities mentioned by him. The evidence of P, Ws. 1 and 2 stands on the same footing and there is sufficient corroboration to their evidence in material particulars as deposed by them and as discussed above. There is sufficient corroboration with regard to the habit and association of the accused persons. The learned Sessions Judge as observed earlier, was not right in discarding the evidence of P. W. 2 and his finding in this regard is erroneous in law. The learned Sessions Judge acquitted 34 accused and Government Criminal Appeal is directed against this order of acquittal. Of these 34 accused we are not required to consider the cases of accused Makhana Boro alias Bishram and Ravan alias Ramenda Boro alias Gopal.

64. Hetep alias Umacharan Boro has been implicated by P. Ws. 1 and 2 in 7 dacoities. The evidence of P. Ws. 4, 5, 7, 9, 10, 14, 20, 21 63 goes to show that this accused belonged to the gang in question which indulged in habitual commission of dacoities. The reasons for his acquittal as given by the learned Sessions Judge are neither convincing nor warranted by law.

65. Accused Rabi Boro has been implicated by P. Ws. 1 and 2 in 7 dacoities, for example, in the dacoities at Dighaldang, at Udalguri, at Dangarkhuti, at Balaguri, at Palasguri and at Kakarmari. The evidence of P. Ws. 1 and 2 regarding the commission of these dacoities has been corroborated by the other evidence on record. The evidence of P. Ws. 4, 5 and 10 goes to corroborate the evidence of P, Ws. 1 and 2 that accused Rabi was an associate of the gang. In the circumstances we hold that the charge against this accused has been amply proved by the evidence on record and the learned Sessions Judge was not right in acquitting this accused.

66. Bisram Boro alias Islary has been implicated by P. W. 1 in 6 dacoities and the evidence of P. Ws. 6, 10, 16 and 63 goes to show that he belonged to this gang. The acquittal of this accused by the learned Sessions Judge was not justified in law.

67. Rajen Brahma alias Rajen has been implicated in 6 dacoities by P. Ws. 1 and 2. The other evidence regarding this accused are those of P. Ws. 5, 6, 14, 16 and 19. The evidence against this accused has conclusively proved the charge against this accused and his acquittal is bad in law.

68. Baidra alias Baburam alias Lebra Boro has been implicated in 3 dacoities by P. Ws. 1 and 2. But we do not find any other corroborating evidence against this accused. In the circumstances his acquittal by the learned Sessions Judge is justified.

69. Magon Boro alias Fulsun Boro has been implicated in 4 dacoities by P. Ws. 1 and 2. The evidence of P. Ws. 38, 41 and 42 goes to corroborate the evidence of P. Ws. 1 and 2. that this accused belonged to the gang and therefore. the charge against him is amply proved and his acquittal is not justified in law.

70. Ustrung Das alias Kamini Mohan Das has been implicated in 2 dacoities by P. W. 1. The evidence of P. Ws. 11. 12. 71 proves that this accused belonged to the gang in question. There is no justification for acquittal of this accused as has been done by the learned Sessions Judge. The charge against him has been proved by the evidence on record.

71. Suren Gayari alias Suren Boro has been implicated in 5 dacoities by P. W. 1. There is no corroborating evidence as to the fact that this accused belonged to the gang. In the circumstances the acquittal of this accused is justified.

72. Isob Ali has been implicated in 4 dacoities by P. W, 1. The evidence of P. Ws. 3. 5. 8 and 72 proves that the accused was a member of the gang and the charge against him is proved by the evidence on record and his acquittal is not justified.

73. Accused Thopsa Boro has been implicated by P, Ws. 1 and 2 in about 13 dacoities but there is no corroborating evidence to show that he belonged to the gang. In the circumstances he is entitled to the benefit of doubt and his acquittal by the learned Sessions Judge is justified.

74. Satiram Boro alias Satiram Basumatari has been implicated by P. W. 1 in 2 dacoities. His association in the gang is corroborated by the evidence of P. Ws. 3,

12 and 35. On consideration of the evidence of P. W. 1 along with other evidence on record, we hold that the charge under Section 400. Indian Penal Code against this accused has been proved beyond reasonable doubt and he was wrongly acquitted by the learned Sessions Judge.

75. Benoy Master alias Benode Mashahari has been implicated by P. Ws. 1 and 2 in 3 dacoities. Except the confessional statements of coaccused Lakhiram and Loken there is no other evidence to show that this accused belonged to the gang. In the circumstances he is entitled to the benefit of doubt and his acquittal is justified.

76. Baburam Boro alias Halawandal has been implicated in 2 dacoities by P. Ws, 1 and 2 Before the learned Sessions Judge P. W. 2 Kamaleswar Musahari however, stated that Baburam was not in the dock. There is no other corroborating evidence to prove that Baburam was a member of the gang. In the result, he also must get the benefit of doubt and he has been rightly acquitted by the learned Sessions Judge.

77. Satyacharan Basumatari was not stated to have taken part in any dacoity by P. W. 1, though he stated that this accused belonged to his gang. P. W. 19 though in his evidence stated to have recognized this accused as one of the dacoits, who committed the dacoity in his house, he did not mention his name in the ejahar though the accused was his co-villager. The other evidence against this accused is rather vague and in the circumstances his acquittal by the learned Sessions Judge is justified.

78. Karen Boro has been implicated in one dacoity by P, W. 2. P. W. 1 stated that this accused belonged to his gang. P, W. 2 stated that he along with Karen and others committed a dacoity in the house of Baijnath Hembram of Modati. There is no other corroborating evidence to show that this accused belonged to the gang. The evidence of P. W, 167 Usunda Boro does not help the prosecution against this accused inasmuch as in the case lodged by P. W, 167 the accused was admittedly acquitted. There being no other corroborating evidence to the fact that this accused belonged to the gang, he is entitled to the benefit of doubt and he has been rightly acquitted.

79. Sukur Boro and Ganga Ram Boro were implicated by P. W. 2 as taking part in committing a dacoity at Tamulpur in Kamrup district. P. W. 2 stated that in this dacoity, they got two pairs of gold earrings and Rs. 20/-and also the gun belonging to the owner. The owner of the house was killed by the dacoits. Material Ext. XI is the gun that was looted from the house of Singi Boro and the gun was given to Loken to keep in their camp at Banglatola. The evidence of P. Ws. 37, 39, 40 and 42 goes to, show that the two accused persons were associates of P. Ws. 1 and 2. On a careful consideration of the evidence against these two accused persons we are satisfied that they be longed to the gang and their acquittal by the learned Sessions Judge is not justified. The charge is found to be proved against these two accused persons.

80. Abhiram Boro has not been implicated in any specific case by P. Ws. 1 or 2. The evidence of other witnesses namely P. Ws, 37, 38 and 39 and the extrajudicial confession Exts. 14, 15, 17, 18, 22, 25 and 26 and the retracted confessional statements of co-accused cannot be relied upon for proving the charge against this accused person and in the circumstances this accused was rightly acquitted by the learned Sessions Judge,

81. Dhajendra was also not implicated in any dacoity by P. W. 1. The other evidence against him is the extra-judicial confession, which may not be relied upon. The evidence of P. Ws. 37, 41 and 42 is regarding his reputation and occasional association with some of other accused persons but since he has not been specifically implicated in any of the dacoities by P. W. 1, it would be unsafe to convict this accused person on such evidence. This accused was rightly acquitted by the learned Sessions Judge.

82. Joseph Boro and Tejendra were not implicated by P. W. 1 in any specific dacoity and the other evidence is similar to that against Dhajendra. In the circumstances these two accused persons were rightly acquitted by the learned Sessions Judge.

83. Dayud Narjari alias Dayud Boro has been implicated in 6 dacoities by P. Ws. 1 and 2. The evidence of P. Ws. 3, 35 and 114 goes to show that this accused was an associate of the gang in question. There is no reason to discard the evidence of

P, Ws. 1 and 2 as corroborated by other evidence on record including those of P. Ws. 3, 35 and 114. The charge under Section 400, Indian Penal Code has been amply proved against this accused and his acquittal was not justified.

84. Biswanath has not been implicated in any specific dacoity by P. Ws. 1 and 2, The other evidence against him is the retracted confessional statement of co-accused and the evidence of P; W, 113 who generally stated that he was known as dacoit with some others, but the evidence is not sufficient to prove the charge against this accused beyond reasonable doubt. Accordingly he was rightly acquitted by the learned Sessions Judge.

85. P. W. 1 has implicated Lebra Boro in the dacoity committed at Udalguri Jharbari in the house of one Christian in Darrang District, in the dacoity committed near Salana Tea Estate in Nowgong District in the dacoity committed in the house of a Mar-wari at a place to the south of Silghat in Nowgong District and in the dacoity committed at a place 3 miles from Bihpuria Railway Station in North Lakhimpur Sub-division. We have already noticed that the evidence of P. W. 1 has been corroborated in material particulars regarding these dacoities The evidence of P. W. 113 and Ext. 135 goes to show that this accused was a member of the gang that committed dacoity under Udalguri Police Station, as deposed by P. W. 1. The evidence on record convincingly establishes the charge under Section 400, Indian Penal Code against this accused and the learned Sessions Judge was wrong in acquitting this accused.

86. Megho Boro has been implicated by P. W, 1 in the dacoities committed at a place 3 miles from Bihpuria Railway Station, North Lakhimpur Sub-Division, at Bamunigaon in Nowgong District and at a place near Salana Tea Estate and at a place near North-Lakhimpur. The commission of these dacoities has been corroborated by other evidence as discussed above. P. W. 114 Harun Basumatari's evidence goes to show that he was an associate of the gang which included amongst others accused Dayud. The evidence on record as discussed above, proves the charge against this accused under Section 400. Indian Penal Code and the learned Sessions Judge was not correct in acquitting this accused.

87. Upen Boro has been implicated by P. W. 1 in the dacoities committed near North Lakhimpur, at a place near Bihpuria Railway Station, at Bamunigaon, at a place near Salana Tea Estate and at Jharbari. P. W. 113 corroborates that this accused was an associate of the other accused persons belonging to the gang. There is no reason to disbelieve the evidence of these witnesses which is corroborated by other evidence discussed above and the learned Sessions Judge was wrong in acquitting this accused person. The charge under Section 400, Indian Penal Code has been proved by the evidence on record against this accused person.

88. Rameswar Basumatari has been implicated by P, Ws. 1 and 2 in dacoities committed at Bamunigaon and at a place near Salana Tea Estate in the district of Nowgong. The dacoity at Bamunigaon was committed in the house of a Marwari. The evidence of P. Ws. 95 and 96 corroborates the evidence of P. W. 1 regarding the dacoity committed at Bamunigaon in the house of a Marwari. The evidence of P. Ws. 96 and 97 goes to show that accused Rameswar was an associate of the gang of dacoits who indulged in dacoities including the one committed at Bamunigaon. There is no reason to discard the evidence of P. W. 1 as corroborated by the other evidence on record, as discussed above and the learned Sessions Judge was not correct in acquitting this accused.

89. Moniram Daimari has been implicated in 6 dacoities by P. Ws. 1 and 2. P. W. 1 has implicated accused Moniram as taking part in the dacoity committed at Bamunigaon in the house of a Marwari and at a place near Salana Tea Estate in the house of a Bora. The evidence of P. Ws. 97 and 99 goes to corroborate the evidence of P. W. 1 in this respect. On a careful consideration of the evidence of P. W. 1 along with the evidence of these 2 witnesses, there is no doubt that accused Moniram was also an associate of the gang in question. The charge against him is found to be proved and his acquittal by the learned Sessions Judge is not justified.

90. Leben Boro has not been implicated in any dacoity specifically by P. W. 1 and the other evidence against him cannot be relied upon for his conviction. Accordingly he was rightly acquitted by the learned Sessions Judge.

91. Ramani Brahma has been implicated by P. W. 1 in commission of the dacoity at North Runikhata. P. W. 1 stated that he was initiated by this accused when Anil and Khitish were the leaders of the gang prior to 1961. The dacoity at North Runikhata took place prior to 1961. Ramani has not been implicated by P. Ws. 1 and 2 in any dacoity during the charge period. Consequently other evidence against him cannot be sufficient to prove his association with the gang. His acquittal by the learned Sessions Judge is, therefore justified in law.

92. Accused Anil Brahma has not been implicated by P. W. 1 as an associate in any specific dacoity during the period from 1961 to 1966. The charge against the accused persons made in the instant case is that they belonged to a gang of persons associated for the purpose of habitually committing dacoity in the Districts of Goalpara, Kamrup, Nowgong Darrang and Lakhimpur during the period from 1961 to 1966. P. W. 1 implicated Anil in a dacoity committed prior to 1961. P. W. 168, P.C. Sarma Sub-Inspector of Police stated that accused Anil was in jail from 28th August, 1961 to 23-3-1965. In the circumstances there is no reliable evidence to show that Anil was a member of the gang during the charge period. The evidence of P. Ws. 29 and 30 shows that accused Lekharam was apprehended in a dacoity in the house of P. W. 29 on 17-3-1966. Accused Lekharam stated before them that Anil was also with them but the statement of Lekharam who is a co-accused cannot be relied upon without some other reliable corroborating evidence. The evidence of P. W. 4 is not sufficient to show the association of Anil with the gang. We are not relying on the confessional statement of any co-accused. In the circumstances we do not find any reliable evidence to hold that accused Anil belonged to the gang during the period from 1961 to 1966 and as such his acquittal is justified.

93. Khitish Brahma has not been implicated as taking part in any dacoity during the charge period. P. W. 17 however stated that he met accused Khitish along with accused Daniel, Ramani and others in the house of one Naren and saw them proceeding being armed with guns and khukris etc. But since P. Ws. 1 and 2 have not implicated this accused as taking part in any of the dacoities during the charge period, the evidence of P. W. 17 only is not sufficient to bring home the charge against this accused. He is therefore entitled to benefit of doubt and he has been

rightly acquitted by the learned Sessions Judge.

94. On consideration of the evidence on record as discussed above we are satisfied that the charge under Section 400. Indian Penal Code against accused (1) Hetep alias Umacharan (2) Robi Boro (3) Bisram Boro. alias Islarv (4) Rajen Boro alias Rajen Brahma (5) Magon Boro (6) Ustrung Das alias Ustrung Rajbongshi (7) Isob Ali alias Yusuf Ali (8) Satiram Boro alias Satiram Brahma (9) Sukur Boro alias Choto Jaila (10) Gangaram Boro (11) Dayud Boro (12) Lebra Boro alias Mudoi (13) Megho Boro (14) Upen Boro (15) Rameswar Basuma-trai and (16) Moniram Doimari has been proved beyond reasonable doubt and the order of acquittal passed by the learned Sessions Judge in respect of these accused persons is set aside. The Government Criminal Appeal No. 13 of 1968 against the aforesaid 16 accused persons is allowed. The evidence on record has not proved the charge against the other accused persons, namely (1) Baidra alias Lebra Boro (2) Suren Gayari alias Suren Boro (3) Thopsa Boro (4) Benoy Master alias Benode Masahari (5) Baburam Boro alias Halawandal (6) Satyacharan Basumatari (7) Karen Boro (8) Abhiram Boro (9) Dhajendra Basumatari (10) Joseph Boro (11) Tajendra alias Tajen (12) Biswanath Basumatari (13) Leban Boro alias Lebendra (14) Ramai (15) Anil Brahma and (16) Khitish Brahma and the Government Appeal against these 16 accused persons is dismissed.

95. In the result the Criminal Appeal No. 32 (J) of 1968 is dismissed and the Government Criminal Appeal No. 13 of 1968 is partially allowed. Accused (1) Hetep alias Umacharan Boro (2) Robi Boro (3) Bisram Boro alias Islary (4) Rajen Boro alias Rajen Brahma (5) Magon Boro (6) Ustrung Das alias Ustrung Rajbongshi (7) Isob Ali alias Yusuf Ali (8) Satiram Boro alias Sati-ram Brahma (9) Sukur Boro alias Choto Jaila (10) Gangaram Boro (11) Dayud Boro (12) Lebra Boro alias Mudoi (13) 'Megho Boro (14) Upen Boro (15) Ramejswar Basumatari and (16) Moniram Doimari are convicted under Section 400, j Indian Penal Code and sentenced to 5 ' years rigorous imprisonment each.

P.K. Goswami, C.J.

96. I agree.

