

**Yusuf Gayen, Vs. State of West Bengal**

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**Court :** Kolkata

**Decided On :** Jul-20-2005

**Reported in :** 2005(4)CHN578

**Judge :** Alok Kumar Basu and ;Pranab Kumar Deb, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 148, 149, 302, 307, 323 and 395; ;Code of Criminal Procedure (CrPC) - Sections 148, 149, 232, 302, 323 and 313

**Appeal No. :** C.R.A. No. 4 of 1998 with G.A. No. 17 of 1999

**Appellant :** Yusuf Gayen, ;ismile Laskar (on Bail), ;sukanta Haldar (on Bail), ;kartick Naskar, ;khudiram Naskar

**Respondent :** State of West Bengal;prabodh Purkait and ors.

**Advocate for Def. :** Dilip Kr. Dutta and ;Arup Chatterjee, Advs. in GA No. 17/1999

**Advocate for Pet/Ap. :** Milon Mukherjee and ;S.B. Chakraborty, Advs. in C.R.A. No. 4/1998, ;Kazi Safiullah (P.P.), ;Swapan Kr. Mallick and ;Subhasish Panchal, Advs. in GA No. 17/1999;Kazi Safiullah (P.P.), ;Swapan Kr. Mallic

**Judgement :**

Alok Kumar Basu, J.

1. In all 109 persons were shown as accused in the chargesheet in connection with Kultali P.S. Case No. 4(1) of 1985 dated 16th June, 1985 out of which Sessions Trial No. 3(5) of 1993 arose. 98 persons were committed to the Sessions Court since 9 accused persons meanwhile either died or escaped trial and out of those 98 persons, 58 persons stood acquitted under the provisions of Section 232 of the Cr. PC and one Yunus Laskar could not be tried due to his insanity and thus, ultimately 39 persons faced the trial before the learned Additional Sessions Judge-cum-Judge, Special Court (EC Act Alipore), 24-Parganas (South),

2. The learned Additional Sessions Judge, while delivering his judgment in connection with Sessions Trial No. 3(5) of 1993, convicted the present appellants who are 6 in numbers under Sections 148, 302/149 and 323/149 of the Cr. PC and sentenced them to suffer rigorous imprisonment for three years and to pay a fine of Rs. 1,000/- each in default, rigorous imprisonment for one year each under Section 148 of the IPC, to suffer rigorous imprisonment for life and to pay a fine of Rs. 100/- each in default, rigorous imprisonment for one year each under Section 302/149 of the IPC and also to suffer rigorous imprisonment for six months each and to pay a fine of Rs. 5,000/- each in default, rigorous imprisonment for three months each under Section 323/149 of the IPC. The learned Judge, however, recorded an order of acquittal in respect of 33 persons including Probodh Purkait and others.

3. The convicted persons preferred Criminal Appeal No. 4 of 1998 while the State being aggrieved by the order of acquittal recorded in favour of the 33 persons preferred Government Appeal No. 17 of 1999.

4. We have heard both the Criminal Appeal and the Government Appeal one after another and by this common judgment, we propose to dispose of both the appeals.

Prosecution case :

5. One Saha Alam Molla lodged the written complaint at Kultali P.S. at about 17.30 hours on 16th June, 1985 to the effect that on 15th January, 1985 at about 8.00 hours about 157 persons as named in the written complaint along with 400 to 500 persons formed an unlawful assembly and being armed with different deadly weapons like lathi, tangi, ballam etc. and under the leadership of one Probodh Purkait and others proceeded towards the village Radhaballavpur and first of all, they attacked and ransacked the house of one Payed Ali Laskar with the object of bringing out his son Abdar Rahaman Laskar and the members of the unlawful assembly looted the household articles of Payed Ali Laskar, assaulted the inmates of the house and there was also commission of rape on sister of Payed Ali Laskar.

6. According to the written complaint when the members of the said unlawful assembly failed to trace out the son of Payed Ali Laskar and when information reached that said son of Payed Ali Laskar was found in the house of one Dr. Srinibas Roy, the members of the unlawful assembly under the supervision of Probodh Purkait and others proceeded towards the house of Dr. Srinibas Roy and reaching there, some members of the assembly entering into the room of Dr. Srinibas Roy dragged out Abdar Rahaman Laskar and Abdur Molla along with Dr. Srinibas Roy and his son Arabinda and members of the assembly thereafter assaulted both Abdar Rahaman Laskar and Abdur Molla with lathi, tangi, ballam etc. resulting their death on the spot. The members of the assembly also assaulted Srinibas Roy, his son Arabinda and one Sudarshan and household articles belonging to Srinibas Roy were also looted.

7. In the written complaint it was further disclosed that on 14th January, 1985 there was a quarrel with the members of Congress party with the members of the SUCI party over the alleged snatching away of mike by Abdar Rahaman Laskar and Abdur Molla and over that issue and out of long standing political enmity, Probodh Purkait and others being the leaders of local SUCI party, formed the unlawful assembly and committed murder of Abdar Rahaman Laskar and Abdur Molla and also assaulted Srinibas, Arabinda and others.

8. On getting written complaint, Kultali P.S. started the specific case and initiated the investigation and in course of investigation, inquest over the dead bodies were made and arrangement was also made for holding post-mortem examination.

9. Initially local police was entrusted with the task of investigation, but, considering the gravity of the offence and considering the implication of political rivalry, CID was entrusted with the work of investigation and after completion of investigation, chargesheet was submitted against 109 persons under different sections of the IPC including the charge of unlawful assembly, murder, looting and assault.

How the prosecution presented its case before the Trial Court :

10. It appears from record that due to huge number of persons involved in the trial and due to change of prosecutors, initially charges framed against the accused persons were amended on some occasions and ultimately charges were framed under Sections 148, 302/149, 395 and 307/149 of the IPC. In course of trial, prosecution examined 22 witnesses including some witnesses who had the occasion and opportunity to see commission of different offences with their own eyes by their presence at the place of occurrence, some witnesses belonging to the Police Department who took part in the process of investigation at different stages and some witnesses who conducted post-mortem examination examined the injured persons and also submitted FSL report. Prosecution witnesses also included different police officers who conducted investigation and ultimately submitted chargesheet.

11. Prosecution apart from oral testimony also produced inquest report, post-mortem report, different

seizure lists, FSL report and also material exhibits in the form of weapons recovered.

Findings of the Trial Court :

12. The learned Additional Sessions Judge in his lengthy judgment discussed the prosecution case as well as the defence plea and thereafter analysing the prosecution evidence in the background of defence contentions observed that prosecution with the help of its oral as well as documentary evidence succeeded notwithstanding the defence objections to establish that there was an unlawful assembly on the date of occurrence and members of the said unlawful assembly were armed with weapons and they attacked the house of Srinibas Roy.

13. The learned Judge, mainly placing his reliance on the testimony of P.W.6, P.W.7, P.W.8 along with FIR, inquest report, post-mortem report and FSL report, was of the view that the present appellants being members of the unlawful assembly dragged out Abdur Molla from the house of Dr. Srinibas Roy and with common object they inflicted injuries on the person of Abdur Molla resulting his death on the spot. The learned Judge relying on the statement of Dr. Srinibas Roy and his son Arabinda also accepted the prosecution case that the appellants inflicted simple injury on the person of Srinibas and Arabinda. The learned Judge although from the evidence was of the view that like Abdur Molla, Abdar Rahaman Laskar was also dragged from the house of Dr. Srinibas Roy and he was also beaten to death by the members of the unlawful assembly, but, from the evidence on record the learned Judge could not fix up any particular individual among the accused persons to hold liable for the murder of Abdur Rahaman Laskar. The learned Judge, after scanning the entire evidence of the prosecution, was of the view that prosecution charge of dacoity committed in the house of Payed Ali Laskar or Dr. Srinibas Roy could not be proved.

14. On the basis of above findings, the learned Judge convicted the present appellants under Sections 148, 302/149, 395 and 307/149 of the IPC and finding no evidence against the remaining 33 persons, the learned Judge recorded his order of acquittal.

Points taken by Mr. Mukherjee on behalf of the appellants to challenge the order of conviction and sentence :

15. Mr. Mukherjee ably assisted by Mr. Chakraborty addressed us on several dates in support of the appeal challenging the order of conviction and sentence and Mr. Mukherjee to help the Court also submitted his written notes of argument in a most presentable form as he often does.

16. From the oral submission as well as from the written notes of argument of Mr. Mukherjee we find that the first point of attack of Mr. Mukherjee is that there was no identification of the dead body of either Abdur Molla or Abdar Rahaman Laskar and in that case the very basis of the prosecution case becomes highly doubtful and weak. Mr. Mukherjee to elaborate his point contends that no relation of the deceased was examined by prosecution and that apart, constable Anil Tudu was not examined who, according to prosecution, identified the dead bodies before the doctor who conducted post-mortem examination. Mr. Mukherjee in this respect drew our attention to the statement of P.W.13 and P.W.15 and he also mentioned exhibit 14.

17. The second point of attack of Mr. Mukherjee is regarding the delayed FIR. Mr. Mukherjee submits that although according to the prosecution case the occurrence took place at the early hour of 15th January, 1985, the FIR was lodged on 16th January, 1985 and there is no apparent explanation behind the delay in lodging the FIR. Mr. Mukherjee contends that in the FIR name of 157 persons were inserted covering different villages and police stations with different addresses and descriptions and this was perhaps the reason of making unusual delay in presenting the FIR which contains a false and fabricated story prepared at the instruction of interested political leaders to take political revenge against the rival political party. Mr. Mukherjee in this context has relied on the ratio of decision in the case of Pala Singh and Anr. v. State of Punjab, reported in 1973 SCC (Cri) 55 to support his contention that unusual delay in lodging FIR would generally encourage the Court to draw an adverse presumption about the veracity of the prosecution allegation, more so, when allegation of political rivalry is readily available.

18. Mr. Mukherjee was very much critical about the alleged place of occurrence as disclosed in the FIR and as narrated by different prosecution witnesses. Mr. Mukherjee contends that from the statement of PW.1, P.W.2, P.W.15, PW. 21 and PW. 22 it appears that none of those witnesses was sure what was the actual place of occurrence. Mr. Mukherjee in this respect has heavily relied on the statement of PW.15 who held inquest over the dead bodies to support his point that, in fact, dead bodies were lying far away from the alleged place of occurrence. Mr. Mukherjee, therefore, concludes that in a case where there is divergent opinion about the place of occurrence, the prosecution cannot expect to get success on such defective FIR and defective structure of the case.

19. Mr. Mukherjee with reference to the evidence of P.W.19, the doctor who conducted the post-mortem examination submits that according to medical expert death of Abdur Molla and Abdar Rahaman Laskar could not have been taken place at the time as alleged by the prosecution and this lends support to the defence case that those two persons were killed at a different place on different dates and only out of political rivalry, a false FIR was prepared to implicate the present appellants.

20. Although Mr. Mukherjee during his oral submission did not mention anything about examination of the appellants under Section 313 of the Cr. PC, in his written note Mr. Mukherjee has stated that examination of all the appellants under Section 313 of the Cr. PC was defective and all the incriminating materials, collected against them during trial were not put to them and hence, on such defective examination of the accused persons, the learned Judge was not justified in recording the order of conviction.

21. Finally, Mr. Mukherjee has submitted on the merit of the prosecution case after analysing the prosecution evidence in detail. Mr. Mukherjee contends that the learned Judge himself did not get much inspection from most of the prosecution witnesses and, in fact, the learned Judge relying on the testimony of P. W.6 and P.W.7 mainly and P.W.8 partially, convicted the present appellants under different charges. Mr. Mukherjee contends that if evidence of P.W.1, P.W.2, P.W.3, P.W.4 and P.W.5 is taken into consideration along with P.W.6, P.W.7, P.W. 8 and P.W.9, it will appear that all the witnesses deposed in total deviation from their earlier statement recorded by the investigating officer during investigation and on close examination of their statements one is bound to conclude that those witnesses being politically motivated deposed before the Court with the only object to implicate the appellants in a false case out of political rivalry.

22. Mr. Mukherjee contends that in case of group rivalries and enmities, there is general tendency to rope in as many persons possible participated in the assault and the present case is no exception and naturally, the Court should scrutinize the evidence of each of the witness carefully and if there is any scope of doubt, the benefit must go to the accused persons. Mr. Mukherjee contends that when the witnesses of the prosecution could not present a reliable and uniform picture about the manner of assault, it would be highly risky to place any reliance on such witnesses considering the political background of the case. Mr. Mukherjee in this context has relied on the ratio of decision reported in the case of Baldeo Singh and Ors. v. State of Bihar, reported in AIR 1972 SC 464.

23. Mr. Mukherjee submits with reference to the impugned judgment that the Trial Court itself recorded that there was variation between the statement given before the Court and the statement recorded by the investigating officer and in such situation, the Court should not have placed any reliance on the improved version of the statement given before the Court and to substantiate his point. Mr. Mukherjee has drawn our attention to the ratio of the decision reported in the case of State of Haryana v. Gurdial Singh and Anr., reported in : 1974CriLJ1286 .

24. Thus, Mr. Mukherjee concludes that when from the FIR itself it is clear that out of sheer political rivalry people covering different villages and police stations were implicated and when no credible and trustworthy evidence came forward from the side of prosecution and when there was no evidence to satisfy regarding the place of occurrence and even identification of the dead bodies and when there was unusual delay in lodging the FIR, the Trial Court relying on some of the witnesses of the prosecution and discarding most of the

prosecution witnesses should not have convicted the present appellants out of 39 persons and judging the prosecution evidence as a whole and keeping the different ratio of decisions in mind, it would be fair and just not to lend support to the findings of the learned Trial Court in the matter of conviction and sentence of the present appellants and like the remaining acquitted persons, the benefit of doubt should go to the present appellants resulting their acquittal.

Submission of the State respondent:

25. Mr. Safiullah on behalf of the State respondent submits that the learned Trial Court in the judgment impugned in this appeal after discussing all the points now taken by the appellants finally concluded that there was sufficient clement of truth in the FIR lodged by P.W.2 and although there appears some discrepancies in the statement of some of the witnesses regarding the place of occurrence, having regard to the overall evidence on record, the Trial Court also accepted the prosecution story that dead bodies of both the persons were found at Chowdhurychack where they were ultimately taken and killed. Mr. Safiullah contends that the Trial Court after considering the evidence of all the relevant witnesses and relying on the inquest report as well as on the postmortem report, rejected the defence contention and accepted the prosecution case that Abdur Molla and Abdar Rahaman Laskar were killed by the members of the unlawful assembly and there was proper identification of the dead bodies before the doctor holding post-mortem examination.

26. Mr. Safiullah submits that it has been the consistent evidence of all the eye-witnesses P.W.1 to P.W.9 that on the date of occurrence there was an assembly of several person's belonging to SUCI party under the leadership of Probodh Purkait and the others and the members of the unlawful assembly were armed with weapons and their object was to trace out Abdur Molla and Abdar Rahaman Laskar and to finish them and from the statement of witnesses who deposed about such unlawful assembly, the prosecution charge under Section 148 of the IPC was clearly established.

27. Mr. Safiullah contends that the house of Payed Ali Laskar was attacked with the object of finding out Abdar Rahaman Laskar and ultimately both Abdar Rahaman Laskar and Abdur Molla were found in the house of Dr. Srinibas Roy P.W. 7 and from the house of P.W. 7 both Abdar Rahaman Laskar and Abdur Molla were dragged out and were beaten to death in presence of Probodh Purkait by the members of the unlawful assembly and all the eye-witnesses successfully identified the assailants of Abdur Molla and Abdar Rahaman Laskar.

28. Mr. Safiullah contends that evidence of P.W.6 to P.W.8 was very much important for the prosecution side since all those witnesses were present at the house of P.W. 7 when the members of the unlawful assembly entered into the house to bring out Abdur Molla and Abdar Rahaman Laskar and when P.W.6 to P.W.8 were assaulted by the members of the unlawful assembly on the ground that they provided shelter to Abdur Molla and Abdar Rahaman Laskar. Mr. Safiullah contends that evidence of P.W. 5 was also very important since she was present in the house when the members of the unlawful assembly had been there to bring out Abdur Molla and Abdar Rahaman Laskar.

29. Mr. Safiullah contends that in a case of present nature when innumerable accused persons ransacked a house and assaulted the inmates of the house and in their presence killed two persons who took shelter in the house, it was not possible for the eye-witnesses to give consistent and detailed account of the event and naturally, there might be some improvement of their statement at the time of their deposition before Court and on that ground alone, the accused persons cannot be acquitted if from the overall evidence there are reasons to hold that the accused persons were members of the unlawful assembly and they shared the common object of killing someone and actually they took part in killing the deceased. Mr. Safiullah in this respect has relied on the decision reported in the case on Navganbhai Somabhai and Ors. v. State of Gujarat, reported in 1994 Cr. LJ page 1103.

30. Mr. Safiullah contends that the learned Judge relied on the testimony of P.W. 6 and P.W.7 to hold the appellants guilty of the offence under Sections 148 and 302/149 of the IPC and also under Section 323/149 of

the IPC mainly on the ground that being injured in the hand of the appellants these witnesses were the best persons to identify the actual culprits who dragged out the deceased and who assaulted the witnesses and in this regard, Mr. Safiullah has referred to the decision reported in the State of U.P. v. Kishan Chand and Ors., reported in 2004 SCC (Cri) page 2013.

31. Mr. Safiullah submits that although prosecution could not examine any relatives of the deceased persons at the time of identification of the dead bodies and although there might be some lacuna in the investigation regarding proper identification of the dead bodies, but, the facts remains that a number of the eye-witnesses deposed with confidence about dragging out of the two victims from the house of P.W.7 and those two victims were ultimately found killed and they were killed as a result of different injuries inflicted on them by the members of the unlawful assembly and in that background, even without proper identification of the dead bodies, there would be only conclusion that the members of the unlawful assembly who dragged out the victims and who assaulted the victims were responsible for the murder and in this regard Mr. Safiullah has relied on the decision in the case of the State of West Bengal v. Mir Mohammad Omar and Ors., reported in : 2000CriLJ4047 .

32. Mr. Safiullah contends that in a case where innumerable persons forming an unlawful assembly ransacked a house and dragged out the victims and assaulted them, it cannot be expected that a particular place can be identified as the place of occurrence where the assault took place and naturally, in this particular case whether the assault took place at Chowdhurychack or Majher Khamar did not assume much importance, but, the facts remains for consideration whether there was an unlawful assembly and whether the members of the assembly actually dragged out the victims and assaulted them resulting their death and the prosecution evidence is very much specific in this regard that the appellants being the member of the unlawful assembly dragged out the victims and assaulted them resulting their death.

33. Mr. Safiullah contends that as many as 8 eye-witnesses identified the appellant Yusuf Gayen, whereas 7 witnesses identified Ismail Laskar, 7 witnesses identified Kartick Laskar, 7 witnesses identified Srutikanta Haldar, 4 witnesses including 3 injured persons identified Khudiram Naskar and 6 eye-witnesses including 3 injured persons identified Kausar Baidya as the persons who were members of the unlawful assembly and who dragged out the victims from the house of P.W.7 and who assaulted both the victims and who also assaulted P.W.6 to P.W.8.

34. Thus, Mr. Safiullah submits that so far prosecution evidence is concerned, the learned Judge rightly convicted all the 6 appellants.

G. A. No. 17 of 1999 :

35. We have indicated earlier that State Government being dissatisfied with the order of acquittal recorded in favour of the 33 persons preferred the Government appeal and we find from record that out of the 33 persons Nabi Molla, Sridham Naiban and Fatema Naskar already expired during pendency of the appeal and now, at this stage, we are to consider whether there is any merit in the Government appeal challenging the order of acquittal regarding the remaining 30 persons.

36. From the petition of appeal as well as from the oral submissions made by Mr. Safiullah on behalf of the Government, we find that the main reason behind challenging the order of acquittal is that the learned Judge failed to appreciate the prosecution evidence in its proper perspective and the learned Judge misdirected himself in the matter of appreciating the Division Bench judgment of the Gauhati High Court reported in 1990 Cr. LJ page 219 whereby he discarded the evidence of most of the eye-witnesses on the ground that they made improvement of their statement at the time of their deposition in Court and there was deviation from their earlier statement given before the investigating officer.

37. Mr. Safiullah contends that prosecution examined P.W.1 to P.W.9 including the FIR maker P.W.2 to substantiate the prosecution charges against all the accused persons facing the trial. Mr. Safiullah after

analysing the statement of the eye-witnesses submits that all the 9 eye-witnesses identified Probodh Purkait who actually led the unlawful assembly from the front with the sole purpose of killing Abdur Molla and Abdar Rahaman Laskar belonging to the opposite political camp and who had indulged themselves in a quarrel with the members of the SUCI party prior to the occurrence. Mr. Safiullah submits that 6 eye-witnesses identified Hari Sadhan Mali, 7 eye-witnesses identified Iran Molla, 7 eye-witnesses identified Anirudha Haldar, 5 eyewitnesses identified Bashinath Gayen and that apart, the remaining accused persons were identified by the eye-witnesses as taking part in assaulting the victims at the place of occurrence.

38. Mr. Safiullah contends that animosity is a double edged sword and if the evidence of eye-witnesses, otherwise, appears to be trustworthy and credible, on the ground of animosity, their evidence cannot be discarded to record an order of acquittal. Mr. Safiullah with reference to the decision reported in the case of Prithvi (minor) v. Mam Raj and Ors., reported in 2005 SCC (Cri) page 198 submits that if on proper appreciation of evidence it appears that approach of the Trial Court was perverse and not found to be in conformity with law, the High Court would certainly interfere and if by appreciating the evidence in its proper perspective and after judging the prosecution case vis-a-vis the defence contention, it appears that the learned Trial Court was not justified in recording the order of acquittal, the High Court should interfere and record its own findings.

Submissions of the accused respondents :

39. Mr. Dutta appearing for the respondents in connection with the Government appeal submits that there was unusual delay in lodging the FIR and that apart, from the evidence of the prosecution witnesses with special reference to the evidence of the police officers it is available that even the place of occurrence was in doubt and naturally, in such a background when the Trial Court did not place any reliance on most of the eye-witnesses and record an order of acquittal in respect of the present respondents, this Court should not interfere with the findings of the Trial Court.

40. In the written note of argument submitted by the respondents, it has been staked after scanning evidence of the eye-witnesses that it appears from evidence that none of the respondent was identified as the person actually responsible for the murder of Abdur Molla and Abdar Rahaman Laskar and considering the evidence as a whole, the learned Judge recorded the order of acquittal and in such background no interference is called for.

41. It has been urged on behalf of the respondents that in a case where several persons were implicated in an FIR which was lodged in a suspicious manner and the Trial Court relying on the prosecution evidence recorded an order of acquittal, the High Court should not interfere and to substantiate this point the case of Yamanappa Goolappa Shirgumpi and Ors. v. State of Karnataka, reported in 1981 SCC (Cri) 271 has been referred. It has also been urged on behalf of the respondents with reference to the ratio of decision reported in the case of Joseph v. State of Kerala, reported in 2003 C Cr LR (SC) 319 that where the Trial Court recorded the order of acquittal with sufficient reasons, High Court, should not be justified in reversing the same only because another view is possible.

42. Thus, the learned Advocate for the respondents submits that when the Trial Court after elaborate discussion of all the eye-witnesses came to the conclusion that case against the present respondents was not proved beyond reasonable doubt and recorded an order of acquittal, following the legal principle enunciated through the different decisions of the Apex Court, it would not be proper to reverse the said order of acquittal.

Our observation both regarding the Criminal Appeal and also regarding the Government Appeal :

43. We have carefully examined the entire prosecution evidence as available with the record of the Trial Court in the background of submissions made on behalf of the respective parties along with their written notes of argument. We would like to record our observation, first of all, regarding the merit of the Criminal Appeal as

preferred by the 6 convicted persons.

44. From the charges framed ultimately against all the 39 persons who were facing the trial at the relevant time, we find that as per the prosecution case the accused persons were members of an unlawful assembly who had the prime object of killing 2 persons one Abdur Molla father of P.W.9 and another Abdar Rahaman Laskar, son of P.W.3.

45. We find from prosecution case that the persons comprising of the unlawful assembly belonged to a particular political party and they were well-organized in their object and they were led by their political leader from the front. According to the prosecution case the members of the unlawful assembly had first attacked the house of P.W.3 in search of his son Abdar Rahaman Laskar and ultimately the members of the unlawful assembly entering into the house of P.W.7 Srinibas Roy, brought out both the victims and assaulted both of them resulting their death. It is also the prosecution case that the members of the unlawful assembly also assaulted P.W.6. P.W.7 and P.W.8 and the members of the unlawful assembly also indulged in the act of looting household articles of both P.W.3 and P.W.7.

46. It is available from the prosecution case that the victims also belonged to a political party and the entire episode started out of political rivalry in the area.

47. From the submissions made on behalf of the appellants we find that main attack against the veracity of the prosecution case has been that of non-identification of the dead bodies of the victims, delay in the matter of lodging the FIR, falsity in the FIR story, ambiguity regarding the place of occurrence, uncertainty about the time of death of the victims and finally, falsehood in the statement of prosecution witnesses out of political rivalry.

48. To appreciate all the points taken by the appellants both before the Trial Court and also before us at the time of hearing of the appeal, we must examine the background of the prosecution case. It is available from record that the SUCI party being angry with the action of the victims on the previous day organized the assembly which was unlawful since inception as members of the assembly were armed with weapons and their sole purpose was to attack and assault the victims. It is true that almost after a gap of several hours the FIR was lodged mentioning 157 names along with some others and detail of named persons was also recorded in the FIR. but, it must be remembered that all the FIR named persons were political activists of the area and the FIR maker and the relatives of the victims also belonged to a particular political group. It is true that some of the names crept in the FIR out of sheer political rivalry without having any factual basis and for that reason alone and after due investigation through the CID, chargesheet was ultimately submitted against 109 persons and again, at, the time of trial 58 persons were acquitted finding no substance against their implication.

49. 39 persons in all faced the trial with specific charges of unlawful assembly and with the charge of commission of murder and assault.

50. The eye-witnesses mainly P.W.3 and P.W.5, P.W.6, P.W.7, P.W.8 and P.W.9 deposed in Court regarding the manner of assault inflicted on the victims by the members of the unlawful assembly.

51. All the witnesses mentioned above saw the occurrence from different angles and from different places, but, they were uniform in the matter of implicating most of the members of the unlawful assembly who ultimately faced the trial till the end.

52. P.W. 3 Payed AH Laskar saw the occurrence when his house was made the target of attack at first as the members of the unlawful assembly had been there in search of his son Abdar Rahaman Laskar who was subsequently killed and he followed the members of the unlawful assembly up to the house of P.W.7 wherefrom both Abdur Molla and Abdar Rahaman Laskar were dragged out and beaten to death and P.W.3 have deposed about such occurrence after mentioning the name of the assailants.

53. P.W. 5 to P.W. 7 were the members of the same family and they were the persons who saw the members of the unlawful assembly to enter into their house and dragging out the victims and to kill them and out of them, P.W. 6 and P.W. 7 were also injured in the hand of the members of the unlawful assembly. P.W. 8 was also a witness to the occurrence. P.W. 9 was the son of victim Abdur Molla and he witnessed dragging of his father and his assault resulting his death.

54. From the statement of the prosecution witnesses we find that several persons in a body took part in the assault and in such a situation, it is not expected that one particular place of occurrence could be fixed where the entire occurrence took place and judging the prosecution evidence in that background, we find no merit in the contention of the appellant that since there was divergent view regarding the place of occurrence, the prosecution case should be thrown outright.

55. It has been the persistent effort of the learned Advocate for the appellants to convince us that since there was no satisfactory evidence about the identification of the dead bodies and since there was divergent statement from the prosecution witnesses regarding the actual time of death of the victims, the prosecution case should be discarded and benefit should be given to the appellants.

56. On perusal of the decisions cited in the bar we find that in a case of similar nature Court should concentrate mainly on the ocular evidence and if ocular evidence gets adequate support from medical evidence and surrounding circumstances, any loophole in the investigation process and any minor discrepancy in the statement of witnesses should be ignored and due credit should be given to ocular evidence, if the same appears to be credible, convincing and trustworthy in the background of the case.

57. From the evidence of the doctor who conducted the post-mortem examination and also from the post-mortem report together with the inquest report, we find that both the victims received multiple injuries all over their dead bodies and according to the doctor death was result of the cumulative effect of those injuries. We get from evidence of eye-witnesses that members of the unlawful assembly were armed with lathi, ballam and tangi and the manner of assault noticed from the post-mortem report clearly supports the ocular evidence.

58. The learned Trial Judge while analysing the evidence of the eye-witnesses placed his reliance mainly on P.W. 6 and P.W. 7 and basing on their statement, the learned Judge came to the conclusion that Abdur Molla was dragged out along with Abdar Rahaman Laskar and both were killed subsequently, but, the learned Judge soon thereafter, came to the conclusion that the appellants were responsible for the murder of Abdur Molla.

59. Having regard to the evidence of prosecution witnesses namely P.W.5 to P.W.8 together with post-mortem report, inquest report and report of the FSL, we virtually find no merit in the contention of the appellants that the victims were not killed on 15th January, 1985, on the other hand, from the prosecution evidence which was so overwhelming in nature, we have reasons to hold that there was an unlawful assembly on 15th January, 1985 and members of the unlawful assembly dragged out both the victims from the house of P.W.7 and thereafter both the victims were beaten to death by the members of the unlawful assembly and this part of the prosecution case was well-proved beyond reasonable doubt both by ocular evidence as well as medical evidence.

60. It has been urged on behalf of the appellants that they were falsely implicated out of political rivalry and keeping this point in our mind when we analyse the prosecution evidence, we are of the view that mere plea of political rivalry cannot be a ground to discard prosecution evidence which appears to be convincing so far involvement of the appellants in commission of the murder of the victims is concerned.

61. We also get from the evidence of P.W.6 and P.W.7 that present appellants were also responsible for assaulting both P.Ws while dragging them out and this evidence was duly supported by the doctor who examined P.W.6. It has been argued on behalf of the appellants that P.W.6 did not disclose the name of the

appellants before the doctor and naturally, the appellants could not be held responsible, but, this argument does not appear to be convincing because of the fact that in the background of the prosecution case it would not be possible for the injured to disclose the name of the appellants at the time when he was taken to hospital, but, subsequently both the injured persons disclosed the name of the appellants in their statement before the I.O. and also in their statement before the Court. Further we have already held from evidence that these appellants were very much part of the unlawful assembly who entered into the house of the injured persons. Thus, after careful perusal of the entire prosecution evidence so far the present appellants are concerned and having regard to the submissions made by the learned Advocate for the appellants, we are of the view that the learned Judge, on proper appreciation of evidence, recorded his conviction order against the present, appellants and there appears no reasonable ground to interfere with the same.

62. We have perused 313, Cr. PC examinations of the appellants and we are unable to subscribe to the views expressed by the learned Advocate for the appellants since in our considered view we do not find anything prejudicial to the interest of the appellants.

63. Thus, in view of our analysis of evidence, we do not find any merit in the present appeal and we are inclined to dismiss the same.

64. Now, we shall take up the Government appeal and we shall examine whether there is merit in the Government appeal. We are aware of the legal constrains in the matter of reversing an order of acquittal already recorded by the Trial Court and as emphasized by the learned Advocate for the respondents with reference to the ratio of decisions already mentioned. But, it is equally established position of law that if on proper appreciation of evidence, it appears that the Trial Court failed to appreciate the evidence properly and recorded an order of acquittal going beyond the evidence on record, the Court of Appeal would be well within its power to record its own observation on making proper appreciation of the evidence and if necessary, would reverse the order of acquittal only in the interest of justice and to prevent abuse in the process of law.

65. We would like to refer to the ratio of decision reported in the case of Pa/a Singh and Anr. v. State of Punjab, reported in 1973 SCC (Cri) 55, wherefrom we find that 'only because the judgment of the Trial Court prima facie seems reasonable, it cannot be said that there is no scope for reassessment of the evidence by the Appellate Court. The Court of Appeal has full power under the statute to go into the entire evidence and all the relevant circumstances of the case for coming to its own conclusion about the guilt or innocence of the accused bearing in mind the initial presumption of the innocence of an accused person and the fact he was acquitted by the Trial Court'.

66. In the light of the above observation, when there is no statutory bar for reassessment of evidence by the Appellate Court, we venture to examine the judgment of the Trial Court in the light of evidence on record, so far its findings regarding the acquittal of the respondents are concerned.

67. On perusal of the judgment of the Trial Court, we notice that Trial Court totally erred in its factual, assessment of the evidence of the prosecution when it discarded most of the vital prosecution witnesses without assigning any cogent reason and at the same time, when the Trial Court partly accepted the evidence of injured eyes-witnesses P.W.6 and P.W.7 and rejected some portion of their evidence without any cogent reason.

68. The Trial Court after analysing the entire prosecution evidence and after discussing the points taken by the accused persons during trial accepted the FIR case as true and genuine and Trial Court also accepted the prosecution case regarding the place of occurrence, regarding the identification of the dead bodies and also regarding the date and time of murder of the two victims. The Trial Court at the same time did not place reliance on the testimony of FIR maker P.W.2 and other material witnesses namely P.W.3, P.W.5, P.W.8 and P.W.9.

69. We on our part examined the statement of P.W.5 to P.W.9 and although we find that on some points these

witnesses made some improvement of their earlier statement, but, having regard to the factual background of the case, we think that on the whole their evidence was acceptable both about the narration of the events and also regarding involvement of the accused persons.

70. On perusal of the prosecution evidence we find that all the 9 witnesses deposed about Probodh Purkait being a member of the unlawful assembly and, in fact, he was the man who led the unlawful assembly from the front and who instigated the murder of the victims. P.W.5 to P.W.7 in one voice deposed about presence of, Probodh Purkait at the place of occurrence when the victims were beaten to death by the members of the unlawful assembly. It is true that there is no evidence to indicate that Probodh Purkait himself inflicted any injury, but, the undisputed legal position is that being a member of the unlawful assembly and sharing the common object of the unlawful assembly even if a person does not participate in the act of assault on the victim, he cannot be absolved of the responsibility and he can be easily roped with the aid of Section 149 of the IPC and, in fact, the specific charge framed against the accused person is under Section 302/149.

71. The learned Advocate for the respondents referred to the evidence of two defence witnesses to support the alibi of Probodh Purkait regarding his absence from the place of occurrence. We have examined the evidence of both the D.Ws. and we fully share the observation of the Trial Court that such alibi presented during trial through those D.Ws. was simple afterthought and have no ingredient of truth in the least.

72. Thus, having regard to the prosecution evidence, we have no hesitation in our mind to hold that the learned Trial Court totally erred in recording the order of acquittal against Probodh Purkait so far the charge of unlawful assembly and the charge of murder of the victims are concerned.

73. On careful perusal of the evidence of prosecution witnesses, we similarly hold that there is ample evidence against Hari Sadhan Mali who was identified by 6 eye-witnesses, Iran Molla who was identified by 7 eye-witnesses, Anirudha Haldar who was identified by 7 eye-witnesses and Bashinath Gayen who was identified by 5 eye-witnesses.

74. Having regard to the evidence of eye-witnesses, so far the remaining respondents are concerned, we do not find sufficient evidence to hold conclusively that they were members of the unlawful assembly or they took any part in commission of the murder of the victims.

75. Thus, after considering the submissions of Mr. Safiullah on behalf of the State appellant and the submissions of Mr. Dutta on behalf of the respondents and on reassessment of the evidence of the prosecution witnesses, we are of the view that so far accused Probodh Purkait, Hari Sadhan Mali, Iran Molla, Anirudha Haldar and Bashinath Gayen are concerned, we do not support the findings of the Trial Court and having regard to the overwhelming evidence against each of them on record, we are inclined to set aside the order of acquittal recorded against those persons and we are inclined to hold that all the abovenamed persons were members of the unlawful assembly and they were responsible for the commission of murder of the victims and accordingly, we hold them guilty both under Section 148 of the IPC and under Section 302/149 of the IPC and they are convicted accordingly.

76. In the result we dismiss Criminal Appeal No. 4 of 1998 and we allow the Government Appeal in part.

77. The order of conviction and sentence against 6 appellants are hereby confirmed.

78. As appellant Ismail Laskar and Sukanta Haldar are on bail, they are directed to surrender to the Court below within one month from this order as their bail bonds are cancelled forthwith, failing which the Trial Court would take appropriate action for their arrest and for sending them to jail to serve the out the sentence.

79. As we have convicted Probodh Purkait, Hari Sadhan Mali, Iran Molla, Anirudha Haldar and Bashinath Gayen under Section 148 of the IPC and under Section 302/149 of the IPC, they must be given adequate sentence. Having regard to the fact of the present case and considering the time gap between the order of

acquittal and the present order of conviction, we hold that all the 5 persons should suffer rigorous imprisonment for life under Section 302/149 of the IPC and to pay a fine of Rs. 500A in default, rigorous imprisonment for three months each and there should not be any separate sentence under Section 148 of the IPC.

80. All the 5 persons namely, Probodh Purkait, Hari Sadhan Mali, Iran Molla, Anirudha Haldar and Bashinath Gayen are directed to surrender before the Trial Court within a month from this order, failing which, the Trial Court shall cause their arrest and shall send them to jail to serve out the sentence now imposed against them by issuing appropriate jail warrant.

81. Send a copy of this judgment along with LCR through a special messenger to the Court below at once.

82. Send copy of this judgment to the Superintendent of Jail/ Correctional Home where the convicted persons are lodged.

83. Urgent xerox certified copy of this judgment and order be made available to the parties on making proper application within three days from making such application after complying with all necessary formalities. Copy of this judgment may be given to convicted persons free of costs.

Pranab Kumar Deb, J.

84. I agree.

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