

IN THE COURT OF THE SPECIAL JUDGE, NIA, ASSAM, GUWAHATI

Spl NIA Case No. 05/2015

Present:- Sri M.K. Bhattacharjee

Special Judge, NIA,

Assam, Guwahati.



NATIONAL INVESTIGATION AGENCY (NIA)

-Versus-

Sh. Pradip Brahma @ Pwler Accused

Under Section 120B, 121, 121A, 302, 307, 386
r/w 34 IPC and Section 16, 17, 18 and 20 of
the Unlawful Activities (Prevention) Act, 1967.

Lawyers for the Prosecution: Mr. D.K. Das, Ld. Special, PP, NIA

Mr. J.A. Hassan, Ld. PP, NIA

Mr. Sathyanarayana, Ld. PP, NIA

Lawyers for the accused : Sh. Ashim Talukdar, Advocate

Sh. Kankan Kalita, Advocate

Sh. Kulajit Medhi, Advocate

Sh. Bishnu Ram Das, Advocate

Dates of recording Prosecution Evidence : 14.12.2015,
08.01.2016, 29.01.2016, 08.02.2016, 09.02.2016, 10.02.2016,
11.02.2016, 15.02.2016, 16.02.2016, 02.03.2016, 03.03.2016,
04.03.2016, 08.03.2016, 17.03.2016, 28.03.2016, 31.03.2016,
02.04.2016, 21.04.2016, 29.04.2016.

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Argument Concluded on : 17.6.2016

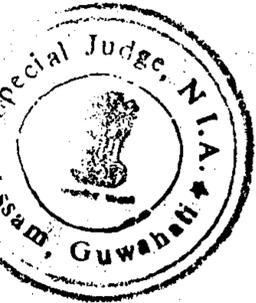
Judgement delivered on : 8.7.2016

JUDGMENT

The prosecution case in brief is that on 01.05.2014, at about 11.30 PM, a group of militants belonging to NDFB (S), attacked innocent people belonging to a particular community living at village Balapara Part-I under Gossaigaon police station in the district of Kokrajhar, Assam, with deadly fire arms and other lethal weapons. As a result of the gruesome attack, seven (7) persons namely, Batchu Ali Sheikh, Mohorban Bibi, Sonaban Bibi, Suhana Khatoon (a child of 2 years), Sayatan Bewa, Farida Khatoon (a child of 6 years) and Jelina Bibi lost their lives. Out of the aforesaid 7 (seven) persons, Farida Khatoon and Jelina Bibi died due to grievous injury caused by sharp and blunt object and the remaining 5 (Five) died due to bullet injuries and Tazrul Ali and Farid Ali sustained bullet injuries but they, somehow, survived.

2. On receiving information about the occurrence, Police arrived at the spot but by that time the assailants had already left the place. Information regarding the incident was registered as Gossaigaon PS Case No. 155/2014. The investigation was initially conducted by Special Task Force (STF), Assam but later vide order dated 20.05.2014, Ministry of Home Affairs, Government of India, handed over the investigation of the case to National Investigation Agency (NIA), which registered RC Case No. 03/2014/NIA-GUW dated 22.07.2014 u/s 448, 457, 302, 307, 326, 324, 427 r/w Section 34 of the IPC and Section 27 of the Arms Act as well as u/s 16, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967.

3. Investigation revealed that the gruesome and terrorizing attack was perpetrated by accused Pradip Brahma @ Pwler and his other associates who belonged to the banned outfit NDFB(S). The assault was carried out



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on the instructions of senior leaders of NDFB(S) namely, I.K. Songbijit and Bishnu Goyari @ Bidai. The purpose of the attack was to kill and terrorize people of a particular community and thereby disrupt peace and harmony in the state. The accused and his associates entered into the houses of the most unsuspecting victims one after another and indiscriminately fired on them killing and injuring persons as named above. Even children were not spared.

4. During the course of investigation, NIA collected materials indicating involvement of accused Pradip Brahma @ Pwler who was in judicial custody on 12.2.15 in connection with Kazigaon P.S case No. 11/2014. Prayer for production warrant was made and allowed and on production of the accused, this court on perusal of the Case Dairy, prepared till then, allowed the prayer of the NIA to show him arrested in the case. The NIA also gathered from their sources that the accused was the Section Commander of Monglajhora Section of Dhubri Platoon of 14th Bn. of the NDFB(S) which is a banned outfit as per the UA(P) Act. On 17.8.2015 NIA laid charge sheet in the case against accused Pradip Brahma @ Pwler after receiving sanction for prosecution from the competent authority. Along with the charge sheet the Chief Investigating Officer submitted a prayer to continue with further investigation. The prayer was allowed.

5. It has been mentioned in the charge sheet that in the night of 01.05.2014, the accused along with his other associates belonging to NDFB, Songbijit group, executed their plan which was earlier made to kill persons belonging to a particular community with a view to strike terror. It was further mentioned in the charge sheet that there was a conspiracy of the NDFB(S) to strike terror by targeting innocent people of a particular community. It was also mentioned in the charge sheet that after committing the terrorist attack, in which several innocent persons lost their lives, accused Pradip Brahma @ Pwler established contact with



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higher leaders of NDFB(S) and their fellow cadres for giving information about the operational object and achievement.

6. During the initial part of the investigation, Assam Police seized 8 nos. of 7.62 calibre fired cartridges and one 7.62 mm x 39 calibre live cartridge which were fired by 7.62 calibre assault rifle (AK-47/AK-56). It was further alleged that the terrorist act such as indiscriminate killing of innocent people was done as part of a larger conspiracy of waging war against the Government of India and also to terrorise and kill people who do not belong to Bodo community in BTAD area.

7. Copies of the materials relied upon by the prosecution including the copies of the statements of the witnesses recorded u/s 161 Cr.PC as well as copies of all relevant documents were furnished to the accused. In the charge sheet, the Chief Investigating Officer (CIO) listed 59 (Fifty Nine) persons as witnesses out of whom 8 (Eight) witnesses were shown as Protected Witnesses after taking permission from this Court. Identities of the protected witnesses have been kept concealed as per provision of Section 17 of the NIA Act.

8. After hearing both sides on the matter of consideration of charge and on careful perusal of the records placed before this Court u/s 173 Cr.PC, this Court charged accused Pradip Brahma @ Pwler u/s 120B, 121, 121A, 302, 307, 386 r/w Section 34 of the IPC and also under Section 16, 17, 18 and 20 of the UA(P) Act. When the charges were read over and explained to the accused he pleaded not guilty and claimed to be tried.

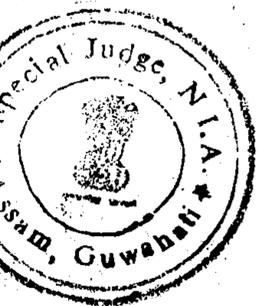
9. Prosecution examined 31 witnesses including the CIO. After closure of the prosecution evidence the accused was examined u/s 313 Cr.PC. Incriminating materials found against him was put to him seeking his response, if any. He denied his involvement in the aforesaid crime and apart from his oral response to the questions asked by this court u/s 313 CrPc, he also submitted a written statement which was considered to be a part of his examination u/s 313 CrPc.



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10. The defence case, as revealed from the response of the accused in 313 Cr.Pc statement and the trend of cross-examination of the prosecution witnesses, was one of complete denial. The accused submitted a written statement wherein he stated that he was a permanent resident of village- Besorkona under Bagribari Police Station of Kokrajhar district and he used to cultivate the land belonging to his father. He further stated that he was looking for a suitable bride for himself and in that connection when he visited a family at Goalpara, he was arrested by the Goalpara Police in connection with Dudhnoi PS Case No. 05/2015. It was stated by him that at the time of his arrest neither any weapon nor any SIM card or arms were recovered from his possession. He further stated that he never gave any disclosure statement to the Investigating Officer and his signatures were obtained on blank paper which was later converted into disclosure statement and discovery memo. The accused claimed that he was falsely implicated in this case. No defence witness was examined.

11. During argument learned Spl. PP, NIA, Mr. D.K. Das assisted by Mr. J.A. Hassan submitted that the accused in pursuance of his conspiracy with his other associates; who were also members of NDFB(S), attacked innocent villagers of village Balapara Part-I killing 7 (Seven) of them namely, Batchu Ali Sheikh, Mohorban Bibi, Sonaban Bibi, Suhana Khatoon, Sayatan Bewa, Farida Khatoon and Jelina Bibi and grievously injuring 2 (two) persons. Learned Spl. PP, NIA also submitted that the Post-mortem of the deceased also revealed that several of the persons died of fire arm injuries. Referring to the testimony of the witnesses, he submitted that PW-2, who lost his mother, wife and daughter in the attack could notice the miscreants when they entered into the room where his wife and children were sleeping. It was also submitted that in the light near the house of Sukur Ali, he noticed one person shouting "Pwler Foidu Foidu". Learned PP also submitted that after two days of the incident the witness lodged an FIR (Ext-1) and in his testimony in the Court he categorically



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identified the accused as one of the persons who entered his house on that day. It was also been submitted on behalf of the prosecution that this evidence alone would be enough to prove the guilt of the accused. Learned PP also submitted that the accused was a member of banned outfit NDFB(S) and the said fact was proved by PW-18, 19 & 20 who were Protected Witnesses. It was further submitted that after arrest of the accused he voluntarily gave a disclosure statement to the Chief Investigating Officer (CIO) in presence of independent witnesses (PW-22 & 16) and subsequent to his statement the accused led the Chief Investigating Officer (CIO) and other witnesses to the house where planning was made to commit the offence and also showed the path by which the accused and his associates travelled to the scene of crime and also showed the houses where innocent persons were killed. The learned PP also referred to the statement of PW-18 who heard the accused telling some persons, after two days of the occurrence, as to how he and his associates, on the direction of Bidai, killed several villagers of Balapara Part-I. Learned PP referred to the testimonies of PW- 19 & 20 and stated that evidence of these two witnesses categorically showed that the accused being member of NDFB(S) forcefully collected money from the witnesses.

12. Learned Spl. PP also submitted that though only one person was charge sheeted in this case it was clear from the evidence that the accused was accompanied by his associates and the nature of the evidence itself clearly showed that the crime was committed in pursuance of a criminal conspiracy. He referred to a decision of the **Hon'ble Supreme Court in "Bimadhar Pradhan -vs- State of Odissa" reported in AIR 1956 SC 469**, where it was held that conviction of only one accused was possible in an offence of criminal conspiracy if the Court came to a finding that two or more persons were actually concerned in a criminal conspiracy. Learned Spl. PP, NIA also referred to a judgment of



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Hon'ble Supreme Court in "Sahoo -vs- State of U.P.", reported in AIR1966 SC 40(1), regarding admissibility of extra judicial confession.

13. Learned defence lawyer started his argument by saying that in this case since only one person was charge sheeted there could not be any material u/s 34 IPC and u/s 120B & 121 A IPC and u/s 18 of the Unlawful Activities (Prevention) Act, 1967. It was also submitted that to attract Section 121 IPC, there ought to be clear evidence that the occurrence created a war like environment against the State. Referring to Section 16 of the Unlawful Activities (Prevention) Act, 1967, learned defence lawyer submitted that the killing of the innocent persons in the village might have been a fearful occurrence which might have created panic among the villagers but the term "terror" was to be distinguished from panic and fear. It was further submitted by the defence that if charge u/s 16 of the U.A(P) Act was found to be not proved, no charge u/s 17 of the Act could sustain. He further submitted that there were no circumstances to show that the accused was a member of NDFB(S) and that by putting anyone under fear of death or grievous injury he collected money by force. Referring to the testimony of PW-3, learned defence lawyer submitted that testimony of PW-3 should be held to be completely untrustworthy and the testimony of PW-18 regarding "so-called" extra judicial confession was not admissible in evidence as the persons to whom the so-called confession was made were not examined in the court. Referring to the testimonies of PW-16, 17 & 22, learned defence lawyer submitted that the testimonies of these witnesses were contradictory to each other and hence no reliance could be placed on them.

14. **POINTS FOR DECISION:**

1. Whether the accused is a member of banned organization named NDFB(S)?



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2. Whether the accused directly or indirectly raised or provided fund for NDFB(S) knowing that such funds were likely to be used to commit terrorist act ?
3. Whether the accused committed extortion by putting any person under fear of death or grievous hurt to that person or to any other person?
4. Whether the accused committed terrorist act within the meaning of Section 15 of the Unlawful Activities (Prevention) Act, 1967 ?
5. Whether the accused entered into an agreement with others within the meaning of Section 120A IPC to do illegal act or an act which is not illegal but by illegal means?
6. Whether the accused entered into a criminal conspiracy with his associates to wage war against the Government of India or attempted to wage war or abetted to waging of such war ?
7. Whether the accused being member of the banned organization NDFB(S) waged war against the Government of India or attempted to wage such war or abetted waging for such war ?
8. Whether the accused, on the mid night of 01.05.2014, committed murder by intentionally causing death of Batchu Ali Sheikh, Mohorban Bibi, Sonaban Bibi, Suhana Khatoon, Sayatan Bewa, Farida Khatoon and Jelina Bibi ?
9. Whether the accused intentionally did an act and if by that act he had caused death of Tazrul Ali and Farid Ali, he would have been guilty of murder ?

DECISION AND REASONS THEREOF:-

15. **Points No.1, 2 & 3:-** Before laying the charge sheet in the court, the Chief Investigating Officer submitted the materials before the



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appropriate authority seeking sanction of the Central Government for prosecution of the accused u/s 120B, 121 & 121A of the IPC and u/s 16, 17, 18 & 20 of the U.A (P) Act. PW 12 deposed in that regard. He stated that after receiving the investigation report of the case it was forwarded to the appropriate authority comprising a former High Court Judge and a former Law secretary to the Government of India for independent review and appropriate recommendation. After obtaining the recommendation of the authority, sanction for prosecution was accorded by the witness with the approval of the Central Government. The sanction order was exhibited as Ext 18. There was nothing in the evidence of PW 12 which could render the sanction for prosecution a nullity.

16. Testimonies of PW 19 & 20 were important and relevant in regard to the decision of the aforesaid points. Both the witnesses were protected witnesses and hence their identities had been kept concealed. PW-19 stated that he had a small business in the district of Kokrajhar and NDFB(S) cadres used to extort money from him. He also stated that one day he received telephone from a person, who introduced himself as Pradip Brahma, who told him to keep money ready so that the same could be collected either by himself or by any other person. He also specifically stated that he was threatened by accused Pradip Brahma that if he made any delay in making payment he would face the consequence. During cross-examination, he was suggested that his two sons were members of NDFB(S). The witness denied the suggestion. The major parts of the cross-examination of the witness were only suggestions given by defence which the witness denied. He also identified the accused in the Court.

17. PW-20, a retired school teacher deposed that in the month of October, 2013, a group of persons came to his school and met him and told that they were cadres of NDFB(S). They demanded money from him. The witness further stated that one of the persons who came to the school was accused Pradip Brahma. He further stated that after about a week the accused came with some other persons and the witness handed over Rs. 10,000/- to the accused. During cross-examination, he was asked whether any written demand was made to him to which the witness replied in negative. Apart from this, remaining part of the



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cross-examination was only about suggestions from the defence side which the witness denied.

18. On consideration of the testimonies of the two aforesaid witnesses it appeared to me that there was no reason to disbelieve their versions. Defence plea was that in absence of written demand of money by the accused or by the NDFB(S) the relevant part of their testimonies should be considered untrustworthy. Indeed, there could have been a written demand. But mere absence of written demand could not be considered as the only reason for not holding the witnesses trustworthy. On close scrutiny of the evidence adduced by these two witnesses there did not transpire any plausible ground which could render them completely untrustworthy. On the contrary, they appeared to be fully trustworthy. The testimonies appeared to be natural and believable. Their identities were kept concealed on the ground of their security. The prosecution, therefore, was able to prove beyond reasonable doubt that the accused was a member of the banned organization named, NDFB(S). The accused is thus, held guilty u/s 20 of the U.A (P) Act.

19. On the question of extortion, learned defence lawyer submitted that the act of the accused as narrated by the witnesses did not constitute extortion within the meaning of section 383 IPC. Extortion has been defined in section 383 IPC as under:- "*Whoever intentionally puts any person in fear of injury to that person or to any other person, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits extortion*". It was clear from the evidence adduced by PW 19 & 20 that the accused threatened them and being put under fear of death or grievous injury they gave money to the accused. PW 19 categorically stated that accused Pradip Brahma threatened him and warned him not to make delay in payment. It was therefore, clear that the accused put the witness under fear of death or grievous hurt and being put under such fear the witness gave money to the accused as demanded. The prosecution has, thus, been able to prove beyond all reasonable doubt that the accused is guilty U/S 386 IPC.

20. The next point for decision was whether the accused was also guilty u/s 17 of the U.A (P) Act. The evidence of the two witnesses discussed above, did



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not show any such distinguishing circumstance that the fund was being collected for use in any terrorist act. The act of the accused, as deposed by PW 19 & 20 appeared to be a plain extortion. Hence he is held not guilty u/s 17 of the U.A (P) Act.

21. **Points No. 5 & 6 :-** During argument, learned lawyers for the defence submitted that in this case there was no ingredient of Section 34, 120B & 121 A of the IPC. The main premise of the argument was that since ingredients of the aforesaid sections categorically imply involvement of two or more persons in the commission of the offence, and since in this case, the accused was the only person against whom charge sheet was filed, such offences should be held to be not proved against him. In this context learned PP, NIA, on the other hand, referred to a decision of **Hon'ble Supreme Court in "Bimadhar Pradhan - vs- State of Odissa" reported in AIR 1956 SC 469** and stated that there was no impediment in convicting only one person in a trial of the crime of criminal conspiracy. I have gone through the judgment and it appeared that in that case more than one person were charged and one such person, that is, a co-conspirator turned approver. However, in this case charge sheet was filed only against the accused. It was, therefore, clear that the facts and circumstances of the aforesaid judgment did not fit in the present case. In the case referred to above, there were more than two persons who were alleged to have been involved in commission of the offence and charge sheet was filed against all of them though the court convicted only one.

22. Offence u/s 120B IPC is defined in Section 120A IPC where it is specifically stated that to constitute an offence of criminal conspiracy there has to be a meeting of minds of two or more persons for doing either an illegal act or a legal act by illegal means. In the present case there was no such specific evidence of meeting of minds of two or more persons. In fact, the accused is the only person against whom charge sheet was submitted and consequently only he was facing trial. Hence, due to complete absence of evidence of any conspiracy, the accused is held not guilty u/s 120B & 121 A IPC.

23. **Points No.4, 7, 8 & 9:-** For arriving at a judicious conclusion regarding these four points we have to consider the relevant parts of the testimonies of the



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witnesses. The main incident took place on 1.5.2014 at about midnight at village Balapara Part-1 under Gossaigaon police station of Kokrajhar district of Assam.

24. PW 1 stated that on 01.05.2014, he was at his residence at village Balapara Part-I. He was sleeping at his house along with his wife, Jalina Bibi, daughter, Farida Khatoon and son, Md. Jamiul Ali. The house was built of half brick wall. At around 11.30 PM, he heard a big sound on the door. He and his wife woke up. There was another sound on the door and the door got opened and thereafter, there was indiscriminate firing. In the firing he was hit by a bullet on his waist and his wife Jalina Bibi and daughter Farida Khatoon sustained bullet injuries and died. There were about 4-5 miscreants who fired at his family. After firing, when they were sure that they had killed the persons inside the room, they went out shouting "foidu" "foidu". Later, he came to know that the above incident was done by NDFB miscreants.

25. PW 2 stated that on 01.05.2014, he was at his residence at village Balapara Part-I. He had two rooms separated by about 4-5 feet. In one room his mother Sayatan Bewa, wife Sonaban Bibi and daughter Suhana Khatoon were sleeping and in the other room he was sleeping. At around 11.30 PM, he heard sound of gun shot from the side of Batchu Sheikh's house which was about 30-40 feet away from his house. On hearing the sound he came out of the room and saw 7-8 miscreants holding weapons in their hands. They were coming towards his house. Seeing those armed miscreants he hid himself behind a room from where he noticed that four persons broke into the room where his wife and children were sleeping. He heard sound of indiscriminate firing. There was light near the house of one Sukur Ali and under the light he saw the assailants. He heard one person shouting "Pwler Foidu, Foidu". After the assailants had left he entered into the room and found his mother, wife and child badly injured. All of them succumbed to their injuries. He also filed FIR which was exhibited as Ext 1. He also proved the inquest done on the dead bodies of Jelina Bibi, Batchu Ali Sheikh, Suhana Khatoon, Sunabhan Bibi, Sayatan Bewa and Farida Khatoon as Ext. 2, 3, 4, 5, 6, 7. He identified the accused in the court as one of the assailants. He also heard one of them shouting "Pwler Foidu, Foidu". During cross examination he was suggested that he was shown the photograph of the accused by the NIA and that is why he identified him in the Court. He denied the



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suggestion and added that when police brought the accused to the village under arrest he was not present there.

26. PW 3 also narrated the incident of that night in which his parents died and he sustained bullet injury. He also stated that he saw the face of one of the assailants. In the court he identified the accused. He also denied the defence suggestion that he was shown the photo of the accused and that is why he identified the accused.

27. PW 4, village headman of the concerned village where the incident occurred, deposed that on the night of 1.5.2014 he heard sound of firing. He telephoned Post Commander of BSF camp and informed about the firing.

28. PW 5 Dr Kandarpa Kr Ramchiary, a doctor of Civil hospital, Kokrajhar conducted post-mortem on the dead bodies of Sahana Khatun, Sunabhan Bibi and Sayatan Bewa. Their post-mortem reports were proved as Ext 8, 9 & 10 respectively and the relevant part of his testimony was as under.

"Sahana Khatun (2 yrs.) female, D/O-Md. Syed Ali of Village Balapara, PS-Gosaigaon reference Tulsibil Out Post, GDE No. 14 dated 02.05.2014. She was brought to the Hospital by Constable UBC-24, Prakash Sutradhar and Md. Sayed Ali on 02.05.2014 who also identified the dead bodies. The dead bodies arrived on 02.05.2014 and the post-mortem was conducted at 12.30 PM of 02.05.2014.

External Apperance:

1. An average built child of approximately 2 years, female in the state of rigor-mortis.

2. Wound position: Inverted (Entry Wound) seen in the right upper mid axillary line, Everted wound (Exit wound) is seen in the left chest, an everted would also seen in the right shoulder; an everted wound also seen in the left elbow, an inverted would is seen in the low back region and a large everted would is also seen in left lumbar-iliac region with prolapse of bowel loops and omentum.

Thorax:

a) Massive haemo thorax is seen.



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b) Laceration of lungs.

Abdomen:

1. Massive haemoperitoneum is seen.
2. Piercing injuries are seen in different loops of intestine.

In my opinion the cause of death is massive haemorrhagic shock caused by multiple fire arm injuries in vital organs. Death appeared to have been caused within 12 to 24 hours. Ext-8 is the Post-mortem report. Ext 8/1 is my signature and ext 8/2 is the signature of the Joint Director, Dr. M.C. Nath whom I know.

Sunabhan Bibi, 22 years, W/O-Md. Syed Ali of Village Balapara, PS-Gosaigaon reference Tulsibil Outpost, GDE No. 14 dated 02.05.2014. She was brought to the Hospital by Constable UBC-42, Prakash Srivastava and Md. Sayed Ali on 02.05.2014 who also identified the dead bodies. The dead bodies arrived on 02.05.2014 and the postmortem was conducted at 12.00 Noon of 02.05.2014.

External Appearance:

1. An average built female dead body of approximately 22 years, female in the state of rigor-mortis.

2. Wound position: Everted abrasion seen over the forehead, Inverted wound is seen in the back thoracic region, an large everted wound seen in the middle of the chest right parasternal region, an inverted wound is seen in the left buttock, a large everted wound is seen in the right iliac fossa with prolaps of omentum and bowel loops. Everted wound also seen in the right knee.

Thorax:

1. Massive haemø thorax is seen.
2. Laceration of lungs.
3. Fracture of body sternum is seen.

Abdomen:

- a) Massive haemoperitoneum is seen.
- b) Piercing injuries are seen in different loops of the bowel.
- c) Piercing injury is seen the urinary bladder with plenty of collection of fluids in Pelvic cavity.



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In my opinion the cause of death is due to massive haemorrhagic shock caused by multiple close fire arm injuries which is ante-mortem in appearance. Death appeared to have been caused within 12 to 24 hours. Ext-9 is the Postmortem report. Ext 9/1 is my signature and Ext 9/2 is the signature of the Joint Director, Dr. M.C. Nath whom I know.

Sayatan Bewa (40 years), wife of Late Sayaful Ali of Village Balapara, PS- Gosaigaon reference Tulsibil Out Post, GDE No. 14 dated 02.05.2014. She was brought to the Hospital by Constable UBC-42, Prakash Srivastava and Md. Sayed Ali on 02.05.2014 who also identified the dead bodies. The dead bodies arrived on 02.05.2014 and the postmortem was conducted at 11.30 AM of 02.05.2014.

External Appearance:

1. An average built female dead body of approximately 40 years, in the state of rigor-mortis.

2. Wound position inverted wound is seen over the left buttock, large everted wound is seen in the right iliac fossa with prolaps of bowel loops and omentum, inverted wound is seen in the right mid axillary line, an everted wound is seen in the mid chest (middle of the sternum), a small everted wounds are seen in the elbow, forearm and in the wrist of the right upper limb.

Thorax:

- a) Teared plura torned with massive haemo thorax*
- a) Massive haemo thorax is seen.*
- b) Laceration of lungs.*
- c) Fracture of body sternum is seen.*
- d) Piercing hole is seen in the heart.*

Abdomen:

- 1) Massive haemoperitoneum is seen.*
- 2) Piercing injuries are seen in different loops of the bowel and prolaps of bowels loops are seen through the exit wound in the right iliac fossa.*



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- 3) *Piercing injury is seen the urinary bladder with plenty of collection of fluid in pelvic cavity.*

In my opinion the cause of death is due to massive haemorrhagic shock caused by multiple close fire arm injuries in the vital organs which is ante-mortem in nature. Death appeared to have been caused within 12 to 24 hours. Ext-10 is the Postmortem report. Ext 10/1 is my signature and Ext 10/2 is the signature of the Joint Director, Dr. M.C. Nath whom I know."

29. From the aforesaid post mortem reports it was clear that Sahana Khatun, Sunabhan Bibi and Sayatan Bewa died of ante mortem fire arm injuries caused within 12 to 24 hours of the time of post mortem.

30. PW 6 Dr. Kaushik Das conducted post mortem over the dead bodies of Batchu Ali Sheikh, Jelina Bibi and Farida Khatoon. However, only Batchu Ali Sheikh appeared to have died of fire arm injury and hence the relevant part of his testimony regarding post mortem of Batchu Ali Sheikh was produced as under.

"Batchu Ali Sheikh (50 yrs) of Kokrajhar PS reference Tulsibil GDE No. 14 dated 02.05.2014. He was brought to the Hospital by Constable-UBC-42, Prakash Srivastava on 02.05.2014 who also identified the dead bodies at 11.00 AM and arrived at the hospital 11.30 AM of 02.05.2014 and the postmortem was conducted at 1.30 PM of 02.05.2014.

External Appearance:

1. One dead male body having rigor mortis on the whole body brought for Post-mortem examination having the following injuries:

a) One entry wound size was 2 cm x 1 cm. Deep and inverted on the right back side of the chest.

B) One entry wound of bullet on the right medial aspects of the right thigh, size was 2 cm x 2 cm.

c) One exit wound of the bullet on the left hypochondrium, size was 4 cm x 3 cm through which intestine came out.



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d) One exit wound on the right thigh, size was 4 cm x 4 cm which was on the lateral aspect of the thigh.

Opinion:

In my opinion the death was due to shock and hemorrhage following bullet injury from the close range which was anti-mortem and homicidal in nature. Death appeared to have been caused within 12 to 24 hours. Ext-11 is the Post-mortem report. Ext 11/1 is my signature and Ext 11/2 is the signature of the Joint Director, Dr. M.C. Nath whom I know."

31. From his testimony it was clear that Batchu Ali Sheikh died of ante mortem fire arm injury and death was caused within 12 to 24 hours of the time of post mortem.

32. PW 26 Dr. Nabajit Barman conducted post-mortem on the dead body of Mohorban Bibi and the relevant part of his testimony is reproduced below.

"Mohorban Bibi (40 yrs.) female, W/O- Bachu Sheikh of Village Balapara No. 1, PS- Gosaigaon, District- Kokrajhar reference B.N. College TOP, GDE No. 22 dated 02.05.2014. She was brought to the Hospital by Constable C/555, Kamrul Haque Mandal and Yeadil Islam on 02.05.2014, who also identified the dead bodies. The dead bodies arrived on 02.05.2014 8.50 AM and the postmortem was conducted at 9.00 AM of 02.05.2014.

Injuries:

1. Bullet entry wound of size 1x1 cm present over the left abdomen on front side, 12 cm below the left nipple and 12 cm lateral to the mid line. It is directed in downward, from left to right and exit out through injury no. 2. Skin, muscles, peritoneum, spleen, stomach, intestine, liver involved.

2. Bullet exit wound of size 5x5 cm present over the right abdomen, 14 cm below the right nipple and 12 cm right to the umbilicus. Part of the intestine seen coming out through the wound.

3. Bullet entry wound of size 1x 1 cm present over the lateral aspect of lower part of left arm, 3 cm above the left elbow and it is directed upward from



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left to right and exit out through injury no. 4. Skin, muscles, vessels nerve bones involved.

4. Bullet exit wound of size 5 x 3 cm present over the medial aspect of lower part of left arm, 5 cm above the left elbow and part of the left humerus bone protruded out and part of the left breast lacerated.

5. Bullet entry of size 1 x 1 cm present over the front of upper part of right thigh. Skin muscles, vessels, nerve, bones involved and exit wound through injury no. 6.

6. Bullet exit wound of size 5 x 4 cm present over the lateral aspect of upper part of the right thigh.

In my opinion the cause of death was due to hemorrhagic shock resulting from the bullet injuries sustained over the body. All the injuries were anti-mortem and caused by fire arms. Approximate time since death 1 to 6 hours at the time of examination. Ext-27 is the Post mortem report. Ext 27/1 is my signature and Ext 27/2 is the signature of the Joint Director, Dr. Khokan Choudhary whom I know."

33. From the testimony of PW 26 it was clear that Mohörban Bibi died of ante mortem bullet injuries.

34. PW 7 & 8 Dr. Bikash Jyoti Bordoloi and Dr. Deep Kumar Deka examined injured Tajrul Ali and Farid Ali respectively and found grievous injuries caused by fire arm on them. Tajrul Ali was examined as PW 3 and from his evidence it was clear that he sustained the grievous bullet injury as a result of the attack perpetrated by the accused. Had he died because of the injury, the accused would have been guilty of murder.

35. When medico legal evidence is compared with the oral testimonies of the witnesses there remained no doubt that Sahana Khatun, Sunabhan Bibi, Sayatan Bewa, Batchu Ali Sheikh and Mohorban Bibi died of bullet injuries and the injuries were ante mortem. That apart, there was yet another set of evidence to show that from the places of occurrence there were seizures of empty cartridges. PW 11 stated that on 2.5.14, that is, the next day of the carnage In-charge of Tulsibil Police out post seized some empty cartridges from the houses of two victims



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named Batchu Sheikh and Farid Ali vide Ext 16 & 17 respectively. PW 25 stated that on the same day police also seized one live cartridge and two empty cartridges from the house of Sayed Ali vide Ext 26. When the seizures were done immediately after the occurrence, the case was being investigated by the Special Task Force, Assam, though later the investigation was handed over to the NIA. PW 24, a Senior Scientific Officer, Directorate of Forensic Science, Guwahati, deposed that on 11.6.2014 the Director received one sealed packet from STF, Guwahati accompanied by a forwarding letter (Ext 21). The sealed packet was handed over to the witness (PW 24) for examination and on examination of the contents of the sealed packet the witness prepared his report (Ext 24) and got the report forwarded to STF, Guwahati with a forwarding letter (Ext 25) under the signature of the Director. The relevant part of the testimony of PW 24 is quoted below:-

"Sl. No. 1 One round 7.62 mm caliber Cartridge marked as Ext-A/1 in the laboratory.

Sl. No. 2 8 nos. fired cartridge caches of 7.62 caliber marked as Ext B/1, B/2, B/3, B/4, B/5, B/6, B/7 and B/8 in the laboratory.

After examination of the above exhibits, I furnished my report as follows:

- 1. Ext. A/1 is a 7.62 mm x 39 caliber live cartridge.*
- 2. Ext B/1 to B/8 are 7.62 mm caliber fired cartridge caches. These were fired by 7.62 caliber assault rifle.*
- 3. Ext. B/1 to B/8 have been compared under comparison microscope and found that:*
 - (i) The firing pin impression and ejector marks of Ext. B/5, B/6 and B/8 are found similar. Hence, it can be concluded that Ext. B/5, B/6 and B/8 were fired by one fire arm.*
 - (ii) The firing pin impression and breech face marks of Ext. B/1 and B/3 are found similar. Hence, it can be concluded that Ext. B/1 and B/3 were fired by one fire arm.*



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(iii) *Ext. B/2, B/4 and B/7 are found dissimilar with the above group Sl. No. 1 and 2. From the above examination it can be concluded that Ext. B/1 to B/8 were fired by minimum three fire arms."*

36. On conjoint reading and appreciation of the testimonies of the doctors who conducted post mortem over the dead bodies of the victim, and the testimonies of PW 11, 24 & 25 there remained no doubt that fire arms were used in unleashing the terror strike. In the testimony of PW 2 & 3, there was direct evidence that deadly assault by fire arm was unleashed upon Sahana Khatun, Sunabhan Bibi, Sayatan Bewa, Batchu Ali Sheikh and Mohorban Bibi by the accused and his companions and as a result of the fire arm injuries they died. PW 2 & 3 saw the accused at the time of commission of the crime and identified him in the court. Defence plea was that the witnesses were unreliable. But on consideration of the entire evidence and also the fact that these two witnesses lost their dear ones in the ghastly killing, there did not appear any reason as to why they would falsely implicate the accused.

37. Through the evidence of PW 16, 17, 22 & 31 (CIO), prosecution sought to prove a disclosure statement of the accused followed by discovery of certain facts under the provision of section 27 of the Evidence Act. But on careful perusal of the testimonies of these witnesses in that regard, it appeared to me that no such fact could be discovered on the basis of the voluntary disclosure of the accused which could be said to be in the exclusive knowledge of only the accused. The accused was stated to have shown the house where the plan of killing was made, the path by which they went to the place of occurrence and the houses of the victim. There was no evidence to show that any plan was chalked out in the concerned house. The path travelled by the accused and the houses of the victims were known to many people. Hence testimonies of the aforesaid witnesses regarding the so called discovery of fact u/s 27 of the Evidence Act would not help the prosecution.

38. Apart from the direct evidence against the accused in the testimonies of PW 2 & 3 there was also an extra judicial confession of the accused as deposed by the PW 18 (Protected witness). For the sake of convenience the relevant part of his testimony is quoted as under:-



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" I do some business in the district of Kokrajhar and Dhubri. I know accused of this case who is also known as Pwler. I have seen him in the Court today. On 03.05.2014, at about 11.00 AM, I went to a tea shop at Basbari village to have a cup of tea. At that time accused Pradip was also sitting there along with 4-5 others persons. At that time I heard accused Pradip Brahma telling the persons accompanying him that on the previous day he and others killed some persons according to the direction of Bidai. Accused Pradip also told his companions not to go towards the side of Rupsi village. Accused Pradip Brahma was talking with his companion about the incident which occurred on the night of 1st May, 2014 at village Balapara Part-I."

39. It was submitted on behalf of the defence that as the person to whom the accused was allegedly making the extra judicial confession was not examined as witness, such statement could not be held to be an admissible piece of evidence. This plea of defence appeared to be extremely weak in as much as the person to whom the accused was talking could never be expected to come to court to depose against the accused. The important part was that the witness (PW 18) heard the accused telling about the incident as to how he and his associates killed the villagers of the village Balapara Part-1, though the communication was not directly made to the witness. In this regard a decision of **Hon'ble Supreme Court in "Sahoo vs State of U.P", AIR 1966 SC 40(1)** would be extremely relevant. In that case a point was raised that implicit concept of confession was that it has to be communicated to another and naturally the person to whom the communication was made was to come to court to prove the confession. Dealing with this point in details Hon'ble Supreme Court held as under:- " A scrutiny of provisions of sections 17 to 30 of the Evidence Act discloses, as one learned author puts it that statement is a genus, admission is the species and confession is the sub-species. Shortly stated, a confession is a statement made by an accused admitting his guilt. What does the expression "statement" mean? The dictionary meaning of the word "statement" is the act of stating, reciting or presenting verbally or on paper. The term "statement" therefore includes both oral and written statements. Is it also a necessary ingredient of the term that it shall be communicated to another? The dictionary meaning of the term does not warrant any such extension;.....The probative value of an admission or confession does not depend upon its communication to another, though, just like



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any other piece of evidence, it can be admitted in evidence only on proof. The proof in the case of oral admission or confession can be offered only by witness who heard the admission or confession, as the case may be.....This court, after considering the relevant provisions of the Evidence Act and the case law on the subject came to the conclusion that that the word "statement" used in section 157 meant only "something that is stated" and the element of communication was not necessary before "something that is stated" became a statement under that section.....We therefore, hold that that a statement, whether communicated or not, admitting guilt is confession of guilt."



40. When the testimony of PW 18 was appreciated in the perspective and context as has been held by the Hon'ble Supreme Court in the above mentioned case, it became clear that though the accused was not directly communicating to the witness, he (the witness) heard the statement when the accused was stating the same to other persons. Since direct communication is not a necessary ingredient of a "statement", there was no reason to refuse to accept the extra judicial confession of the accused as an admissible piece of evidence. PW 18 heard the accused when he was making the statement to another person confessing/admitting his guilt and narrated the statement before the court. This part of the testimony of PW 18 was, therefore, held to be an evidence of extra judicial confession of the accused which could be used against him. Next came the question of trustworthiness of the evidence of PW 18. The testimony, on the face of it, did not appear to be unreliable. He was cross examined by the defence and the plea of the defence was one of complete denial. The defence also tried to demolish his credibility by showing that even after knowing the same he did not go to police. This could not be a reason to disbelieve the witness. Naturally, people have a tendency to not go to police to inform about commission of offence unless he or some one close to him is the victim. By not informing the police immediately after the extra judicial confession was made, the witness did not appear to have behaved in an unnatural way. But when he was questioned by the Investigating Officer of the NIA he came out with the facts. The witness, therefore, was completely trustworthy. That apart, there were enough corroboration of the fact in the evidence of PW 2 & 3.

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41. In view of the consideration and discussion of the relevant evidence in paragraphs No. 23 to 40 of this judgement, it appeared that the prosecution was able to prove beyond all reasonable doubt that the accused was guilty u/s 302 & 307 IPC.

42. The next question that fell for consideration was whether the accused committed a terrorist act within the meaning of section 15 of the Unlawful Activities (Prevention) Act, 1967. For the sake of convenience, provision of section 15 of the U.A (P) Act is reproduced as under.

"15. Terrorist Act – Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,-

(a) by using bombs, dynamite or other explosives substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause-

- (i) death of, or injuries to, any person or persons; or*
- (ii) loss of, or damage to, or destruction of, property; or*
- (iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or*
- (iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or*

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or



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(c) *detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or any other person to do or abstain from doing any act,*

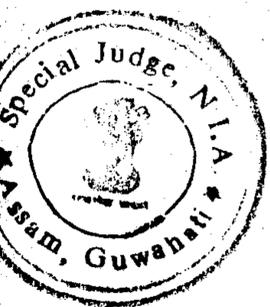
commits a terrorist act.

Explanation- For the purpose of this section, public functionary means the constitutional authorities and any other functionary notified in the Official Gazette by the Central Government as a public functionary."

43. Section 15 of the U.A (P) Act provided that, inter alia other acts, if an act is done with an intent to strike terror in the people or any section of the people by using firearms, such act could be construed as a terrorist act and if death is caused due to such act, the perpetrator of the act shall be guilty U/S 16 (1)(a) of the U.A (P) Act. In the context of the aforesaid, on a bare visualization of the occurrence, as narrated by the concerned relevant witnesses and discussed in the paragraphs No. 23 to 40 of this judgement, it would appear that the act committed by the accused was nothing short of a "terror strike". The accused and his companions serially entered into the houses of the unsuspecting innocent villagers belonging to a particular community and indiscriminately fired upon them causing death. Prosecution, therefore, was able to prove beyond all reasonable doubt that the accused was guilty u/s 16(1) (a) of the U.A (P) Act.

44. Last question that fell for determination was whether the accused waged or attempted to wage war against the Government of India. The purport of section 121 IPC is a little different from other crimes, as discussed above, in as much as unless the act committed could be capable of being construed to be an intended subversion of the power of Government of India on the face of it, such an act could not be held to be waging of war or attempting to wage a war against the Government of India. There did not appear any such specific evidence that the accused waged a war or attempted to wage a war against the Government of India. The accused was therefore, held not guilty u/s 121 IPC.

45. In view of the aforesaid discussion, it is held that the prosecution has been able to prove beyond all reasonable doubt that the accused is guilty u/s



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16(1)(a) & 20 of the U.A (P) Act and u/s 302, 307 & 386 of the IPC. Acused Pradip Brahma @ Pwler is, therefore, convicted accordingly. In regard to the remaining charges, the accused is held not guilty due to lack of enough evidence.

46. Heard the accused on the point of sentence. He stated that he is the only person in his house besides his mother and before his arrest he used to look after his mother and he is the only earning member in the family. He prayed for lesser sentence.

47. Heard learned lawyers of both sides on the quantum of sentence. Learned PP, NIA submitted that seven persons including two children lost their lives because of the attack unleashed by the accused and his companions. He further submitted that the accused deserves to get maximum punishment permissible in law, which is death u/s 16(1)(a) U.A (P) Act and u/s 302 IPC. Learned defence lawyer, on the other hand, submitted that the accused is a young man of 26 years and considering the facts that he is the only adult male member in his family he should be given minimum sentence. On consideration of the facts and circumstances it appeared to me that this case does not fall under the category of "rarest of rare" and accordingly does not warrant death sentence.

48. On consideration of the statement of the accused Pradip Brahma @ Pwler on the point of sentence and submissions of the learned lawyers of both sides, I sentence the accused/ convict as mentioned below.

49. Under section 20 of the U.A (P) Act the accused is sentenced to rigorous imprisonment for seven years and fine of Rs.3000/- and in default of payment of fine to further imprisonment for one year.

50. Under Section 386 IPC, the accused is sentenced to rigorous imprisonment for five years and fine of Rs.5000/- and in default of payment of fine to further imprisonment for one year.

51. Under section 307 IPC the accused is sentenced to rigorous imprisonment for eight years and fine of Rs.5000/- and in default of payment of fine to further imprisonment for one year.



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52. Under section 16(1)(a) of the U.A (P) Act, the accused is sentenced to rigorous imprisonment for life and to fine of Rs.5000/- and in default of payment of fine to further imprisonment for two years.

53. Under section 302 IPC, the accused is sentenced to rigorous imprisonment for life and fine of Rs.5000/- and in default of payment of fine to further imprisonment for two years.

54. The accused/ convict shall be committed to prison forthwith. All the sentences shall run concurrently. Furnish free copy of the judgement to the accused/ convict immediately. All the seized properties shall be confiscated in favour of state in due course. The period of detention undergone by the accused in this case shall be set off u/s 428 CrPc.

Given under the hand and seal of this court, this 8th day of July, 2016.


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