

IN THE COURT OF  
SESSIONS JUDGE, KAMRUP DISTRICT, GUWAHATI

PRESENT : Sri Dilip Kumar Mahanta  
Sessions Judge,  
Kamrup, Guwahati

SESSIONS CASE NO. 136 (K) OF 2003  
Under Section 302, Section 326, Section 302/34,  
Section 326/34 of the Indian Penal Code read with  
Section 27 of the Arms Act [Arising out of CBI Case  
No. RC.4/SCB/97-Cal dated 25-07-1997]

State of Assam

-Vs-

Sri Mridul Phukan @ Samar Kakati  
Son of Late Lapeswar Phukan  
Resident of Sepon, J.B. Road,  
P.S. - Sepon, District - Sivasagar

Date of Argument : 04-07-2009

Date of Judgment : 28-07-2009

A P P E A R A N C E

For the State : Mr. Dilip Kumar Das  
Counsel for CBI  
Mr. Pallab Kataki  
Mr. Manash Haloi

For the accused : Mr. Chetan Sharma, Sr. Advocate  
Mr. Manish Vashisht  
Syed Ikram Rasul  
Mr. Samsul Haque  
Mr. Harunal Rashid  
Mr. Diganta Mangal Neog

## J U D G E M E N T

The case against the accused, above named, as unfolded at the trial, may in brief, be stated as follows:

On 17-05-1996 at about 2-45 p.m., Executive Editor of the news paper named "Asomiya Pratidin", Parag Kumar Das, was gunned down by some unknown miscreants near the Rajgarh Road Railway Gate of the Guwahati City, in front of the Asom Jatiya Vidyalaya. At the relevant point of time, the deceased went to the aforesaid school to bring back his son Sri Rohan Das alias Rishi who was a student of class V of that school. In the afore said shooting incident, Parag Kumar Das received multiple bullet injuries and succumbed to the injuries on the spot itself while deceased's son Rohan also received one bullet injury on his right hand. Parag Kumar Das was taken to Guwahati Medical College Hospital for treatment where the doctor declared him dead on arrival.

On receipt of information over telephone from an unknown person, the then Officer-In-Charge of Chandmari P.S. Sri Rameswar Lalung (PW-3) rushed to the place of occurrence with other police officers. Subsequently, on the basis of the FIR submitted by (PW-3), Chandmari P.S. Case No. 207 of 1996 under Section 302/326/34 of IPC read with Section 27 of the Arms Act was registered.

Afterward, pursuant to the Government of Assam Notification No. PLA-171/96/32-A dated 23-10-1996 duly concurred by the Govt. of India vide its Notification No. 228/19/96/AVD. II/ New Delhi dated 23-04-1997 the investigation of the case was entrusted to CBI.

According to prosecution, during his life time, Parag Kumar Das established himself as a successful journalist and he created sensation amongst the common people of Assam by his criticisms published in different weeklies concerning various policies of the Government, functioning of different administrative organs and against the corrupt bureaucrats, politicians, police officials of general administration. He along with some of his friends formed one organisation named "Manab Adhikar Sangram Samity" (MASS) at Guwahati in the year 1991. Parag Kumar Das also reportedly used to criticize the SULFA activists in his articles published in the newspaper and journals. He also allegedly criticized the selection of Binu Chetia who was a candidate of Margherita Constituency of Upper Assam in the Assembly election of 1996 on behalf of Congress (I) and was supported by SULFA activists. He was killed by some unknown miscreants, reported to be ULFA activists, during his election campaign there. The criticism so made by Parag Kumar Das in the news paper infuriated the SULFA leaders. The said SULFA activists under the leadership of Accused No. 3 Biswajit Saikia alias Tapan Dutta and Accused No. 4 Diganta Kumar Baruah along with others came to the office of 'Pratidin' and met Parag Kumar Das. Those accused persons wanted to publish their counter in the same news paper, against the criticism made by Parag Kumar Das on the death of Binu Chetia but Parag Kumar Das refused and it ensued a heated argument between them. The said SULFA leaders before leaving the place reportedly threatened Parag Kumar Das.

It is the contention of CBI that their investigation also disclosed that Accused No. 1 Nayan Das alias Guli and Accused No. 2 Mridul Phukan alias Samar Kakati were very close to each other and also had good relation with Accused No. 3 and Accused No. 4 and other Upper Assam based

SULFA leaders. They also procured sophisticated fire arms of different nature from various sources. Accused No. 3 Biswajit Saikia along with other SULFA activists went to the house of Binu Chetia after his death (which happened to be few days earlier to the death of Parag Kumar Das) and in presence of witnesses, promised to take revenge for death of Binu Chetia.

According to them, investigation also disclosed that 3/4 days prior to killing of Parag Kumar Das accused Mridul Phukan @ Samar Kakati (A-2) tried to engage an individual namely Kajal Khan to kill Parag Kumar Das. But the mission failed because A-2 refused to pay the amount as demanded by Kajal Khan. Their investigation also reportedly disclosed that A-1 and A-2 were not found at their place of stay during the period from 16-05-96 to 18-05-96. Both the accused persons were found moving at different places of Guwahati and near the place of occurrence prior to death of Parag Kumar Das. A-1 came from Dibrugarh on 16-05-96 and it was learnt that he was carrying a kit bag which contained a small sophisticated fire arm. The front portion of the said firearms had multiple bores. On 16-05-96, he took shelter in a house near the place of occurrence. It was also learnt that A-2 had procured a sophisticated fire arm from Dibrugarh area prior to death of Parag Kumar Das. Besides this he had also few more licensed and unlicensed fire arms. He was also too much annoyed and irritated with Parag Kumar Das for his writings against the SULFA leaders in the newspaper.

The investigation also allegedly disclosed that the accused persons namely Accused No. 3 Biswajit Saikia @ Tapan Dutta and Accused No. 4 Diganta Kumar Baruah also were found at Guwahati on the date of incident and at the place of occurrence also with other accused persons in the same Neptune Blue Maruti 800 car at the time of killing of

Parag Kumar Das. But, the car could not be traced out. The investigation also revealed that A-2 had expressed his relief and pleasure on the death of Parag Kumar Das, when he went to a Mosque at Moran to attend a feast.

During investigation it is also reportedly disclosed that A-1 came to Guwahati on 16-05-96 at about 10-30 hours and he was seen in Guwahati. But, none of the witnesses saw him on 17-05-1996 except the inmates of the house where he took shelter at Guwahati. On 18-05-1996 afternoon, he was seen leaving Guwahati in a Dibrugarh bound bus along with the said kit bag containing the fire arms. The investigation also disclosed that clothing, physique, complexions, height etc. of one of the assailants (as disclosed by eye-witnesses) was matching with A-1.

Investigation also disclosed that Parag Kumar Das died at the place of occurrence on 17-05-96 at 14-45 hours, sustaining multiple bullet injuries from the fire arms of the assailants. 14 nos. of empty bullets of different calibers were recovered from the place of occurrence. Investigation also disclosed that the assailants used two different fire arms and bullets in commission of the offence. The opinion of the medico legal and ballistic experts obtained during investigation also supported the aforesaid facts.

Investigation also disclosed that the accused persons used one Neptune blue colour Maruti-800 car in commission of the offence. The same car was found abandoned near the place of occurrence without having any number plate. All the windows and backside glasses were covered with dark film.

During investigation of the case, the photographs of the accused persons namely Nayan Das @ Guli Das (A-1),

Mridul Phukan @ Samar Kakati (A-2), Biswajit Saikia @ Tapan Dutta (A-3) and Diganta Kumar Baruah @ Palash Hazarika (A-4) were identified by the witnesses from a bunch of photographs of suspects / SULFA activists, displayed during investigation, in presence of independent witnesses. The witnesses reportedly stated before the Investigating Officer that accused persons namely Nayan Das @ Guli Das (A-1), Mridul Phukan @ Samar Kakati (A-2) fired upon the deceased Parag Kumar Das resulting into his death and causing bullet injury at the right hand of the son of the deceased namely Master Rohan Das. The witnesses further stated that the accused Biswajit Saikia @ Tapan Dutta (A-3) was sitting beside the driver, in front seat of involved Neptune Blue Maruti 800 Car and accused Diganta Kumar Baruah @ Palash Hazarika (A-4) was sitting at the driver's seat.

Investigation also disclosed that both the accused persons namely Biswajit Saikia @ Tapan Dutta (A-3) and Diganta Kumar Baruah (A-4) were killed by unknown miscreants on 10-08-98 at Madgharia, Guwahati, and on 03-12-98 at 9.30 p.m. in front of State Zoo, City Bus Stoppage, Guwahati, respectively, which refers to Noonmati P.S. Case No. 122/98 and Gitanagar P.S. Case No. 148/98. So, both of them could not be sent up for trial.

According to prosecution version, from the evidence so collected during investigation, a prima-facie case has been made out U/S 302/326/34 IPC read with Section 27 Arms Act. against the accused persons namely Nayan Das @ Guli Das (A-1) and Mridul Phukan @ Samar Kakati (A-2) who opened fire upon the deceased Parag Kumar Das by using two fire arms causing severe bullet injuries, to which he succumbed. The son of the deceased namely Rohan Das also sustained severe bullet injuries on his right hand in the melee. Accused Biswajit Saikia @ Tapan Dutta (A-3) and

accused Diganta Kumar Baruah @ Palash Hazarika (A-4) were present in the Neptune 800 car used by the assailants for the commission of the crime. Accordingly, the CBI filed charge sheet against Nayan Das @ Guli Das (A-1) and Mridul Phukan @ Samar Kakati (A-2) U/S 302/326/34 IPC read with Section 27 Arms Act to stand trial in the Court of law. During pendency of the trial, accused Nayan Das @ Guli Das also expired and therefore, the case abated against him.

In due course, charge under Section 302, Section 326, Section 302/34, Section 326/34 of the Indian Penal Code and Section 27 of the Arms Act, was framed against accused Mridul Phukan @ Samar Kakati, to which, he pleaded not guilty and claimed to be tried. The plea set up by the accused, as it appears from his statement, recorded U/S 313 of Cr.P.C., is one of complete denial of the prosecution story and false implication. However, no witness was examined by the accused in support of his plea.

I have carefully perused the evidence on record and also considered the submissions of the learned Public Prosecutor and the learned counsel appearing for the accused.

#### POINTS FOR DECISION

Now, the points to be decided in the instant case are as follows :-

1. Whether on 17-05-1996 at about 2-45 p.m. at Rajgarh Road within the jurisdiction of Chandmari P.S. accused Mridul Phukan @ Samar Kakati committed the offence of murder by intentionally causing death of Parag Kumar Das, as alleged ?

2. Whether on 17-05-1996 at about 2.45 p.m. at Rajgarh Road within the jurisdiction of Chandmari P.S. accused Mridul Phukan @ Samar Kakati voluntarily caused grievous hurt to Sri Rohan Das, son of deceased Parag Kumar Das, as alleged ?
3. Whether on 17-05-1996 at Rajgarh Road within the jurisdiction of Chandmari P.S. accused Mridul Phukan @ Samar Kakati possessed / used prohibited arms / ammunition (sophisticated arms) in contravention of provision of Sec. 7 of the Arms Act, as alleged ?
4. Whether on 17-05-1996 at about 2-45 p.m. at Rajgarh Road within the jurisdiction of Chandmari P.S. accused Mridul Phukan @ Samar Kakati in furtherance of common intention with Nayan Das alias Guli Das, Biswajit Saikia @ Tapan Dutta and Diganta Kumar Baruah, committed the offence of murder by intentionally causing death of Parag Kumar Das, as alleged?
5. Whether on 17-05-1996 at about 2-45 p.m. at Rajgarh Road within the jurisdiction of Chandmari P.S. accused Mridul Phukan @ Samar Kakati in furtherance of common intention with Nayan Das alias Guli Das, Biswajit Saikia @ Tapan Dutta and Diganta Kumar Baruah, voluntarily caused grievous hurt to Sri Rohan Das, son of deceased Parag Kumar Das, as alleged?

#### DECISION AND REASONS THEREOF

The first witness to be examined on behalf of the prosecution is P.W.-1 Sri Pranab Kumar Bhattacharjee. This witness has stated in his evidence that on 17-05-96 P.W.-3 Sri Rameswar Lalung was the Officer-in-Charge of Chandmari Police Station and P.W.-1 was posted as the Second Officer of the said police station. According to him, on 17-05-96 Mr. Lalung himself lodged the Ext.-1 F.I.R. at Chandmari Police station relating to the incident of murder of Parag Kumar Das and regarding the incident of causing injury to his minor son Rohan Das @ Rishi. His evidence

reveals that on the basis of the F.I.R. filed by P.W.-3, Chandmari P.S. Case No. 207 of 1996 under Section 302/326/34 of IPC read with section 27 of the Arms Act was registered and the investigation of the said case was conducted by Mr. Lalung himself. The further version of P.W.-1 is that during the course of investigation, one Promode Gogoi was arrested by the investigating officer and he was forwarded to Court vide Ext.-2 (forwarding report) that was written by him as per instruction of Mr. Lalung (P.W.-3). In his cross-examination, this witness also submitted that there was a General Diary Entry in respect of the said occurrence. According to him, he has no personal knowledge about arrest of accused Promode Gogoi.

The evidence of P.W.-2 Dr. H.K. Mahanta reveals that on 17-05-1996 while he was posted as the Associate Professor in the Department of Forensic Medicine, Guwahati Medical College, he conducted the autopsy on the dead body of Parag Kumar Das, Son of Late Durgadhar Das, in connection with Chandmari Police Station General Diary Entry No. 479 dated 17-05-96 and accordingly, submitted Ext.-3 post mortem report to this effect wherein, Ext.-3(1) to Ext.-3 (7) are his signatures.

The said dead body was identified by Constable No. 2694 Sri Ratan Patgiri and the younger brother of the deceased, Dr. Jyoti Kumar Das.

As per post mortem report, the following injuries were detected on the body of the victim, above named.

1. One oval shaped punctured wound 1 cm X 0.8 cm size, muscle deep present on front of right shoulder 11 cm from midline just below the conncoid process (Entry wound).

2. One irregular shaped punctured wound 1.8 X 1 cm, size muscle deep present on the back of right side of chest 0.5 cm right from middle at 7th cervical spine level (Exit wound).

Injury No. 1 and 2 are connected by a tract which passed through the thoracic muscles.

3. One circular punctured wound 0.7 cm X 0.7 cm size chest cavity deep, present on front of right side of chest 11cm from midline and 2cm above the right nipple (Entry wound)
4. One oval punctured wound. 0.8 cm X 0.7 cm size present on back of neck, right side 0.5 cm from midline at 4th cervical spine level. (Exit wound). Muscle deep.
5. One irregular punctured wound 0.5 cm X 0.5 cm size muscle deep present on back of neck right side 1 cm below the injury no.4 (Exit wound).
6. One punctured wound (irregular) 1 cm X 0.5 cm size, muscle deep present on back of neck right side 2 cm right from Injury No. 4 (Exit wound).

The Injury No. 4, 5 and 6 are connected with Injury No. 3 by a tract which passes through the right 3rd internal space, right lung, muscles of root of the neck fracturing the right transverse process of the 6th cervical vertebra which is fractured and missing.

7. Penetrating wound oval shaped 1 cm X 0.8 cm size present on the front of abdomen left side 9 cm midline 2 cm above the level of umbilicus (Entry wound)
8. Penetrating wound 2 cm X 1.5 cm size present on the left side of chest mid axillary line over the 8th rib 16 cm from midline. The 8th rib is found fractured and the broken ends come out (Exit wound).

Injury No. 7 and 8 are connected by a tract which passes through the abdominal cavity, spleen diaphragm and left lung.

9. Oval punctured wound 0.9 cm X 0.7 cm size muscle deep, present on back of the right side of chest at level of 2nd thoracic spine (Entry wound).

10. One large penetrating wound 5 cm X 3 cm size on front of left side of neck, just above the medial end of clavicle just left of midline (Exit wound).

The injury no. 9 and 10 are connected by a tract which fractured the body of 2nd thoracic vertebra and lacerated the esophagus, part of larynx, trachea and vessels.

11. One penetrating circular wound of 0.7 cm X 0.9 cm size chest cavity deep, present on back of chest right side 10 cm from midline at 4th cervical spine level (Entry wound)
12. Irregular penetrating wound 3.5 cm X 2 cm size, chest cavity deep, present on front of chest right side just below the medial end of right clavicle from midline to right. Underlying sternum is fractured and fragments come out (Exit wound)

Injury No. 11 and 12 are connected by a tract which passes through the scapula, 3rd i.e. space, right lung and sternum on front.

13. Penetrating wound, oval shaped 0.7 cm X 0.6 cm size on back of the chest right side 2.5 cm right from 6th thoracic spine. Chest cavity deep (Exit wound)
14. One irregular penetrating wound 5 cm X 2.5 cm size, chest cavity deep present on front of chest in the middle, 10 cm below the sternal notch (Exit wound).

The Injury No. 13 and 14 are connected by a tract which passes through the 6th i.e. space, right lung heart and sternum.

15. One circular penetrating wound 0.7 cm X 0.7 cm size thoracic cavity deep present on back of chest left side 9 cm left from midline at level of 5th thoracic spine (Entry wound).

The Injury No. 15 is connected with Injury No. 14. The tract fractured the left 5th rib, left lung, the heart and the sternum.

16. One oval penetrating wound 0.8 cm X 0.7 cm size present on back of chest left side 14 cm from 8th thoracic spine (Entry wound).

17. One irregular penetrating wound 2 cm X 1 cm size abdominal cavity deep, present on front of abdomen in epigastrium 1 cm left from midline just below the costal margin (Exit wound).

The Injury No. 16 and 17 are connected by a tract which passes through the posterior thoracic wall fracturing the left 6th rib, left lung, and diaphragm, both walls of stomach and anterior abdominal wall.

18. Lacerated wound 4 cm X 1 cm muscle deep on front of abdomen placed horizontally on left side 3 cm from midline 2 cm below the Injury No. 17 caused by glancing bullet.

19. Lacerated wound 3.5 cm X 1 cm, skin deep present on front and outer part of left thigh upper part 17 cm below the iliac spine placed horizontally caused by glancing bullet.

20. Abrasion 1.5 cm X 0.7 cm placed horizontally present on front of right arm 5 cm below the olecranon process caused by glancing bullet.

21. Punctured wound 0.9 cm X 0.8 cm bone deep on outer part of right arm 6 cm above the lateral epicondyle. (Exit wound).

22. Punctured wound 1 cm X 1 cm size, circular bone deep inner side of right arm 9 cm above the medial epicondyle (Exit wound).

The Injury No. 21 and 22 are connected by a tract which passes through the muscle of right arm fracturing (comminuted) the right humerus.

23. Punctured circular wound 0.8 cm X 0.8 cm in size bone deep on front and inner side of right forearm 7 cm below the medial epicondyle (Entry wound).

24. Irregular lacerated wound 6 cm X 4 cm, bone deep on back of right forearm 4 cm below the olecranon (Exit wound). The underlying both forearm bones are fractured into pieces. Injury No. 23 is connected to Injury No. 24.

25. One oval punctured wound 1.5 cm X 1 cm on back of right wrist bone deep (Entry wound).

26. One irregular lacerated wound 4 cm X 4 cm bone deep on outer part of right wrist and hand (Exit wound).

Injury No. 25 is connected with Injury No. 26 by a tract which dislocated lateral four carpal bones and fractured the base of 1st and 2nd metacarpal bone.

27. Punctured wound, oval, 1.5cm X 1 cm bone deep on back of right hand on inner aspect (Entry wound).

28. One irregular lacerated wound 4 cm X 3 cm, bone deep on medial part of right hand and root of ring and little finger.

Injury No. 27 is connected to Injury No. 28. The right 4th and 5th metacarpal bones are fractured into pieces.

29. Lacerated wound 3 cm X 1 cm, bone deep on inner aspect of right middle finger.

In the opinion of the doctor, death of the victim was caused due to shock and hemorrhage resulting from the injuries sustained. All the injuries were ante mortem, caused by rifled firearm and were homicidal in nature. No bullet or pellet was recovered from the body. No burning, blackening or tattooing detected on the body and the garments. According to P.W.-2, the probable time of death of the victim was around 3-6 hours prior to the time of post mortem examination which was conducted on 17-05-1996 at about 7-10 p.m.

According to the evidence of P.W.-42 Sri Manoranjan Talukdar, Scientific Officer, Ballistic Division, Forensic Science Laboratory, Assam, on 24-09-97, the exhibits sent to them in connection with Chandmari P.S. Case No. 207 of 1996 were handed over to CBI vide Ext.-17 wherein, Ext.-17(1) is his signature.

In his evidence, P.W.-41 Sri S. S. Murthy deposed that he did his Ph.D. in the subject of Image Processing and

Pattern Condition for identification of small arms and ammunition from the Department of Computer Science and Engineering from the Jadabpur University, Calcutta. He also obtained diploma in Forensic Ballistic Science from the National Institute of Criminology and Forensic Science, Delhi. As per his deposition, on 01-10-1997 he received two sealed cloth packets in connection with CBI Case No. RC/4/SCB/97 Calcutta dated 25-07-97. The seal impression forwarded matched with the seal of the packets so received. P.W.-41 opened the cloth packets and found 14 fired cartridges marked EC-1 to EC-14. Second sealed cloth packet contained on banion, one half sleeve shirt and one grey colour trouser marked C-1, C-2 and C-3, respectively. According to him, after due scientific examination, the cartridges marked EC-1 and EC-8 were found to be of 7.62 X 39 mm caliber cartridge. Likewise, cartridges marked EC-9 to EC-14 were of 7.62 X 25 mm caliber cartridge. P.W.-41 further opined that C-2 was caused due to firing. However, in respect of C-1 and C-3, the witness has stated that it is not possible to give definite opinion due to insufficient data. According to him, it is also not possible to state scientifically on the time elapsed since last firing. Ext.-15 is the report prepared by P.W.-41 which was forwarded to the Chief Judicial Magistrate, Guwahati, vide Letter No. CFSL/EE/97(G/I)-887/984 dated 15-02-99 wherein, Ext.-15(1), Ext.-15(2) and Ext.-15(3) are his signatures.

The statement of P.W.-44 Dr. S. Sathyan is that he has done his M.Sc. and law graduation from the Madras University and at present he is working in the Central Forensic Science Laboratory, Hyderabad, as the Senior Scientific Officer. According to his version, on 30-03-98 he received the following items for chemical examination in connection with Case No. RC/4/SCB/97-Cal.

1. Ext. C-1 Baniyan Cuttings

2. Ext. C-2 Shirt Cuttings
3. Ext. C-3 Pant cuttings.

According to the report (Ext.-18) of P.W.-44, the result of the serological analysis and the other related examination gave positive test for blood in all the samples but the blood grouping and the origin of blood could not be ascertained due to disintegration of the blood.

In his evidence, P.W.-3 Sri Rameswar Lalung deposed that on 17-05-96 he was serving as the Officer-in-Charge of Chandmari Police Station. On that day he lodged the Ext.-1 (F.I.R.) on account of the occurrence of killing of Parag Kumar Das and for causing injury to his son Rohan Das wherein, Ext.-1(1) is his signature. According to his version, on the basis of the said F.I.R., Chandmari P.S. Case No. 207 of 1996 U/S 302/326/34 of IPC read with Section 27 of the Arms Act was registered and he himself took up the investigation of the said case. During the course of his investigation, which continued for about a month, P.W.-3 reportedly recorded the statements of some of the witnesses. Thereafter he was transferred from Chandmari Police Station and therefore, he handed over the Case Diary to his successor. During investigation P.W.-3 arrested one Promode Gogoi @ Babu and forwarded him to Court. Ext.-4 is the relevant Forwarding Report and Ext.-4 (1) is the signature of P.W.-3.

In his cross-examination, this witness further deposed that the initial information about the incident was entered in the General Diary Entry No. 473 dated 17-05-96 and on the basis of the said entry he proceeded to the place of occurrence. He found Parag Kumar Das lying in an unconscious state at the crime scene and he was immediately sent to Guwahati Medical College Hospital. He

also deposed that he lodged the Ext.-1 (F.I.R.) on that very night.

P.W.-46 Sri Bhupendra Kumar Nath deposed in his statement before Court that in the year 1996 he was posted as S.I. of Police at Chandmari P.S. On 17-05-96, at about 2 p.m., they received information over telephone regarding an incident of firing in front of the Assam Jatiya Vidyalaya situated at Rajgarh Railway Gate. The person who had telephoned did not disclose his identification. He simply informed that one person had been shot. As per evidence of P.W.-46, on receipt of the said information they rushed to the spot along with the Officer-In-Charge of Chandmari P.S. and other police staff and on their arrival, they found one person with multiple bullet injuries lying by the side of the road in front of the school. P.W.-46 could recognize the person as Parag Kumar Das who was the then Executive Editor of the popular Assamese daily newspaper "Pratidin" as the deceased was known to him prior to the alleged incident. He lifted the injured and took to the Gauhati Medical College Hospital and also sent a message to the City Police Control Room. In the hospital, Parag Kumar Das was declared dead by the doctor.

Thereafter, P.W.-46 conducted inquest on the corpse of Parag Kumar Das in presence of Mrinmoy Dey belonging to the Pratidin Group of Publication and others. Ext.-21 is the inquest report wherein, Ext.-21(1) is the signature of P.W.-46. Ext.-21(2), Ext.-21(3) and Ext.-21(4) are the signatures of witness Apurba Sarma Baruah, Pranab Sarma and Mrinmoy Dey, respectively. Subsequently, the dead body was sent for Post Mortem Examination.

In his cross-examination, this witness deposed that the inquest was done by him as per direction of the then Officer-In-Charge of Chandmari P.S. Sri Rameswar Lalung

and on the basis of the relevant G.D. Entry No. 479 dated 17-05-1996 of Chandmari P.S. but the Officer-In-Charge himself was not present at the time and place of the inquest. P.W.-46 also stated that he did not search for any article lying near injured Parag Kumar Das as his duty was to rush the injured to the hospital to save his life. According to him, Officer-In-Charge Mr. Lalung was however present at the spot where the injured was found lying.

The version of P.W.-32 Sri Harmohan Kakati is to the effect that he joined as the Officer-In-Charge of Chandmari P.S. on 27-09-1997 and on the same day, he received the Case Diary of the Chandmari P.S. Case No. 207 of 1996. During investigation of the said case he reportedly examined some witnesses. Thereafter, the case was handed over to CBI as per Govt. notification.

In his testimony, CBI Inspector Sri Sadhan Kumar Das (P.W.-45) stated that on 25-07-1997, as per order of the SP/ CBI / SCB / Calcutta, he registered the F.I.R. in connection with the CBI Case No. RC.4/SCB/97-Cal by treating the FIR of Chandmari P.S. Case No. 207 of 1996 dtd. 17-05-96 registered U/S 302/326/34 IPC read with Section 27 of the Arms Act. Ext.-20 is the said F.I.R. wherein, Ext.-20(1) is the signature of P.W.-45 with endorsement.

The deposition of P.W.-43 Sri Bhagaban Das reveals that during part investigation of the instant case, conducted by him, he recorded statement of Jugal Kishore Mahanta, Saurav Gogoi, Diganta Baruah, Tapan Dutta, Rupen Phukan, Rajen Phukan, Ram Gogoi, Nagen Deka, Mridul Phukan, Lachit Bordoloi, Jagadish Bhuyan and Dipak Bhuyan. According to him, he examined Mridul Phukan at Calcutta on 27-07-99 and 28-07-99.

As per evidence of Sarat Chandra Kalita (P.W.-34), on 16-09-97, while he was posted as police Constable in the Chandmari Police Station, on being produced by him, the CBI officials seized the General Diary Volume No. 8, 9, 10 and 11 of Chandmari P.S. vide Ext.-9 [Seizure Memo] wherein, Ext.-9(1) and Ext.-9(2) are the signatures of P.W.-34.

It is the evidence of P.W.-5 Dr. Narendra Nath Ganguly that on 23-09-97 while he was working as the Registrar of Surgery at Gauhati Medical College Hospital, he issued the Ext.-5 medical certificate on the basis of the findings recorded by Dr. P. Neog in respect of medical examination of injured Rohan Das in the Medico Legal Register of Casualty Department.

In his deposition, P.W.-48 Sri Arjun Kalita has asserted that on 24-09-1997 he was working as a Peon in the Office of the Superintendent of Gauhati Medical College Hospital. According to him, on that day one S.I. of police from the CBI visited their office and seized the injury report of Rohan Das, son of Late Parag Kumar Das in his presence.

The statement of P.W.-35 Sri Dwijendra Kumar Das is that on 23-09-1997 he was working as the Record Assistant in the Casualty Department of Gauhati Medical College Hospital. On that day, CBI officer seized the following documents on being produced by P.W.-35 vide Ext.-10 [Seizure List] wherein, Ext.-10(1) and Ext.-10(2) are his signatures.

1. Registration Card No. ML 8828/96 and Hospital No. 21169 dated 17-05-1996 of Parag Kumar Das (Xerox Copy)
2. Medical Certificate of Death of Parag Kumar Das dated 17-05-1996 (Xerox Copy)

3. One copy of the medico legal record pertaining to Registration No. ML 8828/96 dated 17-05-1996 of Parag Kumar Das (Xerox Copy)
4. Page 105 of the Death Register dated 17-05-1996 mentioning that on that day Parag Kumar Das was brought dead to hospital (Xerox Copy)
5. Page 5 (a) and 5 (b) of the Out Patient Register dated 17-05-1996 pertaining to Parag Kumar Das (Xerox Copy)
6. One page of the Out Patient Register dated 17-05-1996 pertaining to Rohan Das (Xerox Copy)
7. Advice slip of Rohan Das. Hospital No. D-8169 dated 17-05-1996 (Xerox Copy)
8. One page of the Medico Legal Register dated 17-05-1996 pertaining to Rohan Das
9. One copy of the M.O. Register mentioning day duty pertaining to date 17-05-1996 (Xerox Copy).

The evidence of Dr. Dhiraj Bhattacharjee (P.W.-47) makes known that on 15-01-1998 he was serving as Junior Doctor at Gurucharan Nursing Home situated at Paltan Bazar, Guwahati. On that day he was witness to the seizure of some articles at the said Nursing Home which were seized by the police from the younger brother of deceased Parag Kumar Das. Ext.-11 is the said Seizure List. Ext.-11(2) is the signature of P.W.-47 appearing in the said document. This witness also identified the seized articles as Material Exhibit No.1 is the purse, Material Exhibit No.2 is the wrist watch and Material Exhibit No.3 is some currency notes amounting to Rs.405/-. Nevertheless, P.W.-47 admitted in his cross-examination that he did not know to whom the said articles belonged.

The testimony of P.W.-39 Sri Lachit Bordoloi is to the effect that on 02-04-1998 CBI people came to Office of

Manab Adhikar Sangram Samiti (MASS) situated at Ananda Nagar, Guwahati, and vide Ext.-12 and Ext.-13 Seizure Lists, they seized some copies of Assamese magazine namely, 'Aagani' and weekly to be precise, 'Budhbar', MASS newsletter and pamphlets published both in English and Assamese wherein, Ext.-12(1) and Ext.-13(1) are his signatures.

On the other hand, P.W.-40 Sri Pranab Acharjee stated in his statement that on 21-01-98 CBI people visited the 'Pratidin' office and seized some copies of newspaper namely 'Saadin' and 'Asomiya Pratidin' in his presence vide Ext.-14 Seizure List wherein, Ext.-14(1) is his signature.

It is the evidence of P.W.-30 Sri Alok Nath that on 17-05-96, while he was in the house of one Prasanta Barua of Hengerabari, Guwahati, around 1-30 / 2-00 p.m., he received a phone call from Dhekial Phukan informing that Parag Kumar Das had been killed. On the same day, during evening hours, Dhekial Phukan reportedly informed P.W.-30 over phone that police might also suspect him (Dhekial Phukan) in connection with the killing of Parag Kumar Das so he was at a loss what to do. On 21-05-96 Dhekial Phukan met him just in front of Dispur Police Station and he allegedly told P.W.-30 that he had been called by police for interrogation. On 16-05-96 afternoon, Dhekial Phukan along with Bitopan Deuri and Guli met P.W.-30 in the house of Prasanta Baruah. At around 6 p.m., Bitopan came and took Dhekial Phukan. According to him, since 1984, he knew Dhekial Phukan, who at that time was a student leader and P.W.-30 was the President of undivided Darrang District All Assam Students' Union. He also admitted that he knew Guli.

The statement of P.W.-4 Sri Ajit Kumar Bhuyan is that deceased Parag Kumar Das was known to him as a writer. While P.W.-4 was the founder editor of "Saadin", deceased Parag Kumar Das used to work as the editor of "Budhbar". Army operation started in Assam in the year 1991 and during that period Parag Kumar Das, advocate Niloy Dutta, and some of his friends formed one organisation christened "Manab Adhikar Sangram Samiti (MASS)" at Guwahati and during this period, P.W.-4 reportedly came into contact with deceased Parag Kumar Das. In the year 1991, both P.W.-4 and Parag Kumar Das were reportedly arrested by police. According to P.W.-4, the writings penned by Parag Kumar Das annoyed the various administrative organisations, corrupt political leaders and the Govt. machineries.

He further stated that in the year 1995, publication of "Asomiya Pratidin" was started and P.W.-4 became the editor of the said news paper. During the relevant period, Parag Kumar Das stopped his publication "Budhbar" and joined "Asomiya Pratidin". As per evidence of P.W.-4, on 17-05-96, at about 11 / 11-30 a.m., he along with some of his friends of Manab Adhikar Sangram Samiti assembled in the rented house of Parag Kumar Das and discussed about the future of the said association.

Thereafter, Parag Kumar Das along with his wife travelled to Chandmari in the car of P.W.-4. At Chandmari Police Point, wife of Parag Kumar Das got down from the car and P.W.-4 along with Parag Kumar Das went to his office. Around, 2 / 2-30 p.m. Parag Kumar Das left the office to pick up his son Rohan Das from Assam Jatiya Vidyalaya which is situated at Rajgarh Road and P.W.-4 reportedly returned home from his office. During his stay at his residence, at about 3 / 3-30 p.m., he received a telephone call that Parag Kumar Das had been shot on the Rajgarh

Road. After receiving the telephone call P.W.-4 rushed to the place of occurrence and on his arrival, he saw Parag Kumar Das lying dead with bullet injuries. P.W.-4 honestly admitted that he had no knowledge as to the identity of the assassin of Parag Kumar Das.

According to the evidence of P.W.-6 Haidar Hussain, on 17-05-1996, around 3-30 p.m., he saw the dead body of Parag Kumar Das in the hospital who was gunned down by some unknown miscreants in front of the Assam Jatiya Vidyalaya when he went there to pick up his son. He further declared that Parag Kumar Das had no personal enemy. P.W.-6 also stated in his evidence that during cremation of Parag Kumar Das, some ULFA boys resorted to blank fire at the burial ground. He also deposed that he had no information as to who killed Parag Kumar Das.

In his testimony, P.W.-28 Sri Manjit Mahanta averred that in the year 1995 he joined "Asomiya Pratidin" as the Chief Sub Editor. Deceased Parag Kumar Das also joined the said news paper as the Executive Editor. According to him, during that period, he along with Ajit Bhuyan, deceased Parag Kumar Das, Niloy Dutta and others formed "Manab Adhikar Sangram Samiti (MASS)" as there was frequent violation of human rights. On 17-05-1996 while P.W.-28 wanted to talk to Ajit Bhuyan over telephone, his domestic help informed him that Parag Kumar Das had been killed by extremist and that Ajit Bhuyan had gone there. According to P.W.-28, he immediately rushed to Rajgarh Road and saw the bullet riddled dead body of Parag Kumar Das lying at that place. From the gathering he came to know that Rohan Das, son of Parag Kumar Das had also sustained bullet injuries and he had been removed to hospital for treatment. Afterwards, the dead body of Parag Kumar Das was taken to Gauhati Medical College Hospital and P.W.-28 came back to his office. According to version of this witness, deceased

Parag Kumar Das had no good terms with SULFA. He further disclosed that about one month prior to the alleged occurrence, SULFA boys namely Jugal Kishore Mahanta, Tapan Dutta along with two others visited the office chamber of Parag Kumar Das and some altercation took place among them.

The owner of Asomiya Pratidin newspaper Sri Jayanta Baruah (P.W.-36) stated in his deposition that prior to about 15/20 days of the alleged event, he came to know that Parag Kumar Das had been threatened by some miscreants and therefore, P.W.-36 reportedly advised him to take security. As per his evidence, he also came to know that some SULFA boys had threatened Parag Kumar Das regarding publication of some news item against them. After that incident Parag Kumar Das started to use the office vehicle. On 17-05-1996, at noon, he got a telephonic call that Parag Kumar Das had been killed by some miscreants near Rajgarh Road. Immediately, P.W.-36 along with his General Manager and others rushed to the spot and saw the bullet riddled body of Parag Kumar Das lying in front of the Asom Jatiya Vidyalaya situated at Rajgarh Road. Immediately the injured was taken to Gauhati Medical College Hospital where he was declared dead on arrival. According to P.W.-36, he had no idea about who might be the killer of Parag Kumar Das.

P.W.-38 Sri Prasanta Saikia asserted in his deposition before Court that in the year 1997 he was functioning as the organizing Secretary of MASS (Manab Adhikar Sangram Samiti) of Lakhimpur. He knew Parag Kumar Das since 1988 as he was associated with him in connection with the affairs of MASS and paper. On 17-05-1996 there was a meeting at Guwahati and P.W.-38 attended the said meeting. Parag Kumar Das also attended the said assembly. Around 1-30 p.m., Parag and his wife left the meeting hall and after ten

minutes of their departure, one boy namely Mouth came there and enquired about Parag Kumar Das. P.W.-38 told him that Parag Kumar Das had already left. According to the version of this witness, he met the boy named Mouth, who was a surrendered ULFA, in the house of Advocate Nekibur Zaman.

He further deposed that on that day, while he was going to Lakhimpur, P.W.-38 got the information regarding killing of Parag Kumar Das by some extremist. Thereafter, he came back to Guwahati from Nagaon and went to the deceased's native home at Maligaon and there saw the dead body of Parag Kumar Das.

P.W.-37 Dr. Jyoti Kumar Das is the brother of deceased Parag Kumar Das. According to his narration, on the date of occurrence at around 3-30 p.m., he got a telephonic message from his mother informing that something had happened to Parag. On receipt of the said message, he went to the residence of his elder brother situated at Bamuni Maidam and came to know from his sister-in-law that Parag Kumar Das had sustained bullet injury and that he had been removed to Gauhati Medical College Hospital. P.W.-37 went to the said hospital and came to know that in the meantime Parag Kumar Das had succumbed to his bullet injuries. He also noticed deceased's son Rohan in the observation room with some injuries.

The further version of this witness is that the attending doctor handed over to him one purse, one wrist watch and one handkerchief belonging to the deceased. According to him, during investigation, police seized the said articles vide Seizure List [Ext.-11] wherein, Ext.-11(1) is the signature of P.W.-37.

P.W.-7 Sri Rohan Kumar Das is one of the important witnesses of the prosecution as he was present with the deceased at the time of the alleged incident. According to his version, in the year 1996, he was a studying in Class-III of Asom Jatiya Vidyalaya, situated near the Rajgarh Road. On 17-05-96 his father Parag Kumar Das came to his school to escort him back home. On that day he was waiting for his father in front of the school. Around 2-40 p.m. he was coming out from the school followed by his father. At that time, he heard sound of gun shots and looked back. His father caught hold of him and told him to go inside the school. In the said event, P.W.-7 also sustained some injury. There was oozing of blood from his right hand. Afterwards, he was taken to Gauhati Medical College Hospital for treatment by the teachers. He was provided first aid and thereafter he came back to his residence. He came to know that his father had been shot dead. P.W.-7 however could not provide any lead regarding the identity of the attackers.

In his testimony, P.W.-14 Sarju Khan has deposed that accused Mridul Phukan @ Samar Kakati is his next door neighbour and he is a friend of his elder brother Kajal Khan. According to him, Bitopan is his good friend. P.W.-14 has also declared in his statement that accused Mridul Phukan is a SULFA. Sometimes, accused Mridul Phukan and Kajal Khan used to help police and army when operation is carried out against the extremists mainly ULFA. According to him, Nayan Das @ Guli, Saurav Gogoi, Tapan Dutta and Jugal Kishore Mahanta are all SULFA boys; they all are ONGC contractors and belong to Dibrugarh district; they regularly carry arms and sometimes they keep their arms in the custody of P.W.-14. He further asserted that immediately after the incident of killing of Parag Kumar Das, police personnel went to him and enquired about whereabouts of Nayan Das @ Guli. Accordingly, he took

them to the Ranghar Cinema Hall of Dibrugarh and identified Nayan @ Guli. His further version is that one Tilak Gogoi took the police party to the house of Mridul Phukan where police made some search. Later on, he came to know that Tilak was killed by somebody. Immediately after the incident "Milad" was held at Moran Mosque and the said function was attended by Mridul Phukan and Kajal.

This witness is however declared hostile by the prosecution. Though P.W.-49 has proved the contradictions of this witness, in his evidence, P.W.-14 has denied having stated before police that on 18-05-96 about 10-30 hours Kajal, Mridul, Chantal and Momi went to Dibrugarh for a tender; that on the same day afternoon he come to Moranhat mosque where some renovation work was going on; that on that day Maszid committee arranged a feast for the persons who worked there; that Mridul, Kajal, Chanchal and Momi also came there and joined the feast; that Mridul and Biju were talking about the death of Parag Kumar Das and then Mridul expressed that on the death of Parag Kumar Das they are now relieved and the death of Parag is good for SULFA activists; Kajal and Mridul went to Guwahati before election 1996; Bitopan had intimacy with Kajal when he used to stay at Moranhat.

Rather, in his cross-examination by the defence, P.W.-49 has declared that he does not remember the date on which he visited the Moran Mosque; that he never heard any discussion that took place between Kajal and Mridul; that he does not remember whether Kajal and accused Mridul accompanied with the army apprehended any extremist; that he was not present when Tilak Gogoi identified the residence of Mridul to the police personnel. He further pronounced that he had no business relation with Mridul Phukan.

The contention of the prosecution that on 18-05-96 accused Mridul Phukan expressed his relief on the death of Parag Kumar Das and commented that his death was good for SULFA activists in the feast held at Moran Mosque is thus not authenticated by P.W.-14 Sarju Khan.

The statement of P.W.-15 Biju Buragohain is that in the year 1996 / 1997 he had one eatery (Dhaba) on the Dimu main road of Dibrugarh District. Kajal, whom P.W.-15 knew to be a member of SULFA, used to visit the said Dhaba. He further stated that about 10 years back, his cousin brother Binu Chetia participated in the election with Congress (I) ticket but he was killed a day before the election by ULFA. He further declared that Phunu Chetia was the brother of Binu Chetia and that accused Mridul was known to him. This witness has also been declared hostile by the prosecution.

He denied having stated before police that that Phunu Chetia is connected with the SULFA members of Dibrugarh district; that they have a group of their own; that Tapan Dutta, Jugal Kishore Mahanta are all connected with police and army in anti ULFA operation and accumulating huge arms, ammunitions and even money; that even ULFA is also afraid of them; that Guli Das of Khowang was under their control.

No doubt, in his evidence, the Investigating Officer [P.W.-49] has proved the said contradictions of this witness but this fact in no way will help the prosecution as P.W.-15, in his substantive evidence before the Court, has not said anything regarding the fact that that Tapan Dutta, Jugal Kishore Mahanta were all hand in glove with police and army in respect of anti ULFA operation and that they are accumulating huge arms, ammunitions and even money to

such extent that even ULFA is also afraid of them; that Guli Das operates under their control.

In his statement P.W.-16 Biju Khan has deposed that not only he owns of a school, he also works as the President of 22 numbers of Majid Committee at Moran. According to him, Kajal Khan and accused Mridul hail from Sepon and both are known to him. He has further asserted that as per his knowledge earlier Mridul was a member of ULFA organisation and now he has joined SULFA. On 16th, 17th and 18th day of May, 1996, a Milad was arranged in a local mosque. Kajal was also present in the said feast. On 16th and 17th June, 1996 Mridul Phukan was not present at Moranhat. Accused Mridul Phukan attended the meeting held on 18-05-96 and congratulated P.W.-16 for his election victory. This witness is also declared hostile by the prosecution. In his cross-examination, he stated that accused was not invited by them and that Mridul never passed any comment nor he said anything regarding death of Parag Kumar Das.

The contradictions proved by the police officer who recorded the statement of this witness make it known that in his statement before police P.W.-16 stated that accused Mridul expressed his relief on the assassination of Parag Kumar Das when he attended the mosque on 18-05-96 afternoon.

Since P.W.-16 has specifically deposed in his evidence that accused Mridul never passed any comment regarding death of Parag Kumar Das, his purported statement to this effect before the Investigating Officer is of no value.

P.W.-21 Sri Rahul Phukan deposed in his version that in the year 1996, he was studying in the Paramount English School, Guwahati, as a student of Class VI. According to

him, on the date of incident, he came to know that one journalist had been killed by gun shot and his son had also sustained injuries. According to his version, he did not know Mridul Phukan and Guli Das.

The prosecution declared this witness hostile. The contradictions proved by prosecution makes it clear that before police, P.W.-21 stated that on the previous day of death of Parag Kumar Das, during morning hours, Guli came to their house with a bluish colour bag and after keeping the said bag in their residence he left. He again returned in the afternoon and stayed for the night and also took meals. Accused Mridul also visited their house on the previous day of arrival of Guli. On 17-05-96, he did not mark as to at what time Guli left their house but he returned in the evening with the said bag. On that day Guli was dressed in cream coloured jeans pant and off white half sleeves jeans shirt. Earlier also Guli used to visit their house with Mridul as they were very close to his mother. On 18-05-96 Guli again left their house during morning and returned in the afternoon. He took his bag and after a conversation with his mother left the house. On that day another man also came with him by a Maruti Esteem car. Later on, he came to know from his mother that his name was Bitopan whom he never saw earlier. After death of Parag Kumar Das he never saw Guli or Mridul visiting their house.

This alleged statement by P.W.-21 Sri Rahul Phukan before the Investigating Officer also cannot be considered in view of his specific assertion in his testimony recorded in the Court that he did not know Mridul Phukan and Guli Das.

According to version of P.W.-22 Sri Kalpa Jyoti Neog he joined the banned ULFA organization in the year 1983 and he surrendered in the year 1991. He knows Sunil Nath

who joined ULFA in the year 1987 and surrendered in the year 1991. He knew deceased Parag Kumar Das. Previously they used to stay together at Maligaon. Deceased Parag Kumar Das used to write articles in the "Pranitk" magazine where P.W.-22 also used to work during the relevant time. According to him, he was one of the founders of MASS but he was not a member. The organization MASS used to work highlighting the atrocities committed by police, army as well as ULFA. Deceased Parag Kumar Das used to write against army atrocities in Assam. According to P.W.-22, he knows Dhekial Phukan, Bitopan Deuri, Kajal Khan and Mridul Phukan who were members of ULFA organization before their surrender. After surrender Mridul Phukan formed Asom Jatiya Maha Sabha and he was the Secretary of Sibsagar Unit of the said organisation.

In his statement before Court, P.W.-23 Sri Bimal Pachari simply deposed that his house at Sepon is situated near the house of Kajal Khan and Mridul Phukan. He knows Kajal Khan from his childhood. He is also acquainted with Mridul Phukan from the year 1992. Both Mridul and Kajal used to move together and they had good relation. According to him, Mridul Phukan is a SULFA and he works as contractor of ONGC.

P.W.-24 Smt. Chantal Sandra Phukan deposed in her testimony that in the year 1995, she worked in Hotel Bluemount situated at Survey, Beltola. The owner of the hotel was Kalpa Jyoti Neog and other partner of the hotel was Dhekial Phukan. The hotel closed down during the 1st part of year 1996. Thereafter, she left her hotel job. She has three children namely Rahul Phukan aged 19 years, Rodney Phukan aged 17 years and Natasha Phukan 15 years. Her husband who was suffering from T.B. from 1994 expired in the year 1999. She knows Sunil Nath, Kalpa Jyoti Neog, Mridul Phukan and Dhekial Phukan. She could not

remember regarding whether she was in Guwahati w.e.f. 15-05-96 to 18-05-96. She came to know from her husband that Mridul Phukan was his cousin brother. This witness was also pronounced hostile by the prosecution.

The prosecution has proved by way of contradiction that this witness made statement before police that during her stay in the hotel she came in contact with many SULFA activists of upper Assam like Guli, Mridul Phukan etc. as well as SULFA activists of lower Assam who used to stay in the hotel during their visit at Guwahati; that Mridul Phukan and Guli used to visit her home time to time and stay there; that though she cannot remember accurately but it was in between 15-05-96 to 18-05-96 Mridul visited her house; Guli also visited the house during that time; Guli again came on 16-05-96 afternoon; that the youth named Kajal of Sepon and Bitopan who hails from Moran visited her house long back before death of Parag Kumar Das but they never stayed in her residence; on 18-05-96 afternoon, Bitopan and Guli came by a Maruti car most probably in a Gypsy or Esteem, which she can not remember exactly; Guli took his lunch on that day at her house; Guli also talked to her and left with Bitopan on the same evening by the same car; Guli used to carry one canvas / rexin type bag which is generally carried by the sportsman during his visit to her house; he resided in her house at night on 16-05-96 and 17-05-96; on 18-05-96 when he left the house on being called by Bitopan he was wearing cream coloured jeans pant and off white shirt; she was not present at her house on 17-05-96 as she went to Shillong; when she returned on 18-05-96 morning she saw Guli at her house; it will not be possible for her to give evidence in the Court against Guli or Samar because, if the information about her statement is heard or leaked out to them, or any of their group, they might kill her as well as her children.

However, since this witness, in her deposition before the Court, has not endorsed this purported version of her, recorded by the Investigating Officer, the portion of this statement cannot be used against the accused.

In his testimony P.W.-25 Sri Rodney Phukan denied that he knew Mridul Phukan and Guli. He was declared hostile by the prosecution. Prosecution has proved through the mouth of P.W.-49 that this witness in his statement recorded by police deposed that on the previous day of the murder of Parag Kumar Das, Guli came to their house; that at that time his mother was not present in the house; that Guli came with a bluish colour kit bag made up of rexin / canvas commonly used as bag by the sports men; that the bag contained some books and one small size weapon having some pores in the front portion; that Guli left the house after bath but again came in the night and stayed; that on the date of death of Parag Kumar Das Guli left the house in the morning and returned in the evening with the bag; that on the next day afternoon, he left their house with the bag; that few months prior to this visit once when he went to Blue Mount Hotel with his mother he saw Guli handling the same bag and the same fire arm inside a room that his mother warned him not to disclose the matter to anybody otherwise Guli might kill him etc.

In view of the specific denial of P.W.-25 Sri Rodney Phukan, in his testimony before the Court, that he knew Mridul Phukan and Guli, his alleged statement before police is of no significance.

The statement of P.W.-19 Manoranjan Gogoi is that in the month of August, 1991, he joined banned organization ULFA and he surrendered before in the month of April, 1992. Kajal Khan who was detained in custody under T.A.D.A. is known to him. Accused Mridul Phukan resides

near his house at Sepon. The further statement of P.W.-19 is that Mridul Phukan was a member of banned ULFA organization but subsequently he surrendered; that after his surrender he is doing contract business; that Kajal Khan and Mridul Phukan are neighbours.

P.W.-26 Sri Sunil Nath stated in his deposition that he joined banned ULFA organization in the year 1985 and in the year 1992 he surrendered. During the year 1988-89 he met Parag Kumar Das while the later was working in "Budhbar" as an editor. At that time P.W.-26 was looking after the Publicity Wing of ULFA and for this reason, he used to frequently meet journalist Parag Kumar Das to apprise him about the activities of ULFA and asked him to support their ideology. Later on, Parag Kumar Das started writing in favour of ULFA. After his surrender P.W.-26 reportedly met Parag Kumar Das only once when on 14-01-92 he attended the discussion held in the residence of Ajit Bhuyan in presence of Advocate Niloy Dutta, Kalpa Jyoti Neog. Earlier to that when MASS was formed deceased Parag Kumar Das was the General Secretary. The main objective of the MASS was to ventilate against the Army atrocities which prevailed in Assam at that time. On 17-05-96, he came to know that Parag Kumar Das had been killed by some extremists while he came to bring his son from school. He also knew Binu Chetia who was a businessman of Margherita and contested election on Congress ticket. As per evidence of P.W.-26, Binu Chetia was killed by ULFA during his campaign. This witness expressed his ignorance why and by whom Parag Kumar Das was killed. He further stated that Mridul Phukan was also a member of ULFA who later on surrendered. He denied having made any statement before CBI personnel and therefore, he was declared hostile.

P.W.-49 has however stated that witness Sunil Nath in his statement before police stated that Parag Kumar Das

might have been killed by SULFA activists and Guli and Mridul may be involved in this killing; that he knew that both Guli and Mridul visited the house of a questionable lady at Guwahati one day prior to the killing of Parag Kumar Das and thereafter they left Guwahati on the next day; that both of them were carrying fire arms like Sten gun, AK-47, pistol etc.; that he had information that SULFA activist Diganta also came to Guwahati on the day before killing of Parag Kumar Das and he was not found at Guwahati after death of Parag Kumar Das; that Diganta is a good driver and he also owned one blue coloured Maruti car which actually belongs to Mridul.

In view of the specific averment by P.W.-26 Sri Sunil Nath, in his deposition before the Court, that he did not make any statement before the CBI personnel and that he is ignorant as to why and by whom Parag Kumar Das was killed, his alleged statement that Parag Kumar Das might have been killed by SULFA activists Guli and Mridul; that he knew that both Guli and Mridul visited the house of a questionable lady at Guwahati one day prior to the killing of Parag Kumar Das and thereafter they left Guwahati on the next day; that both of them were carrying fire arms like Sten gun, AK-47, pistol etc.; cannot be taken into consideration, these being not substantive evidence.

In this connection, it is important to note that Smt. Chantal Sandra Phukan (P.W.-24) is the mother of Sri Rahul Phukan (P.W.-21) and Sri Rodney Phukan (P.W.-25). If the statement of the Investigating Officer is to be believed, in course of their statements before police, both Smt. Chantal Sandra Phukan (P.W.-24) and Sri Sunil Nath (P.W.-26) expressed danger to their lives in case they give evidence in the Court supporting the prosecution version. Smt. Chantal Sandra Phukan (P.W.-24) specifically deposed that it would not be possible for her to give evidence in the

Court against Guli or Samar because, if the information about her statement is heard or leaked out to them, or any of their group, they might kill her as well as her children. On the other hand, Sri Sunil Nath (P.W.-26) also reportedly stated before the Investigating Officer that he knew that his life would be at stake if he repeats his statement before police in the Court but he thought that truth should come out. These two statements of P.W.-24 and P.W.-26 clearly reveal the real reason why P.W.-21, P.W.-24, P.W.-25 and P.W.-26 resiled from their earlier statements.

In view of the fact that these witnesses expressed their probable fear of retaliation in clear words, it was the responsibility on the part of the CBI to arrange for proper security of these witnesses so that they could have made their statement before Court without fear or fright. The result of not providing them any assurance of their protection is perhaps the result of these witnesses not supporting their earlier statements where vital clues about the involvement of the preset accused were depicted.

P.W.-27 Kajal Khan's testimony is that he joined ULFA in the year 1989 and he was arrested by the army in the year 1991. Now he is running a Hotel named Out Town Dhaba at Sibasagar. The residence of Mridul Phukan is situated near his house. He knew Guli who hailed from Dibrugarh. In the year 1999 he was in Nepal and after six months he returned to Assam. This witness has also been declared hostile by the prosecution.

He denied having stated before police that once while he was coming from the Dhaba belonging to one Ranjit, he met Samar on the road; that Samar took him to his house and offered meal and alcohol; that on that night Samar identified himself as a SULFA leader and expressed before P.W.-27 that SULFA members were becoming the victims of

killing by ULFA almost every day and he would have to do something against this; that Samar also blamed Parag Kumar Das that he was the man who was indicating the SULFA people to be the victims of ULFA killing through his writings in the paper; that about 3/4 days prior to death of Parag Kumar Das, Samar also met him at the Dhaba and proposed him to arrange for killing of Parag Kumar Das saying that if an ULFA leader like Parag Kumar Das is killed then the frequent attack of ULFA activists on the SULFA will be reduced; that initially P.W.-27 refused the said proposal but due to insistence by Samar, he demanded rupees two lakh as the price to kill Parag Kumar Das; that hearing his demand Samar refused and the matter ended there.

The above statement of P.W.-27 Kajal Khan before the police officer does not carry any value because, in his deposition before Court, this witness did not utter a single word that accused Mridul Phukan @ Samar Kakati proposed him to arrange for killing of Parag Kumar Das but when P.W.-27 demanded rupees two lakh as the price for the said assignment, the accused backed off.

In his statement before Court, P.W.-33 Sri Prafulla Bora alias Dhekiyal Phukan deposed that on 17-05-96 he received a telephonic call from Kalpa Jyoti Neog informing that Parag Kumar Das had been killed by some unknown miscreants. His further version is that on 16-05-06 he was at Guwahati and that he knew Bitopan Deuri, Guli @ Nayan Das and Samar Kakati @ Mridul Phukan. As the witness did not support his earlier version recorded by police he was declared hostile by the prosecution.

According to the version of Investigating Officer (P.W.-49), this witness in his statement before CBI stated that on 16th May at about 11-30 hrs he went to the residence of Alok Nath in his own car accompanied by Guli

and Bitopan and he passed the whole day in that house; that he also disclosed that Guli and Samar Kakati were involved in the alleged incident.

As P.W.-33 in his evidence before Court has not stated anything regarding the fact that on 16-05-06 he went to the residence of Alok Nath in his own car accompanied by Guli and Bitopan and he passed the whole day in that house and he also did not mention that that Guli and Samar Kakati were involved in the alleged incident, his purported statement before the Investigating Officer is of no value.

It is no doubt true that the evidence of the hostile witnesses can be relied upon to the extent it corroborates the prosecution version. It is also a settled position of law that the statements made by the witnesses before the police and recorded U/S 161 Cr.P.C. cannot be treated as substantive evidence and undue importance cannot be give to such statement, as the same cannot be treated as evidence. However, such statement can be used for the limited purpose of impeaching the credibility of a witness. Declaration of the witnesses to be hostile does not ipso facto reject the evidence and the portion of the evidence being advantageous to the parties may be taken advantage of but the Court before whom such a reliance is placed shall have to be extremely cautious and circumspect in dealing with such cases. The Apex Court in Ram Swaroop Vs. State of Rajasthan reported in (2004) 13 S.C.C 134 has observed that

*"It is no doubt true that merely because the witness is declared hostile his evidence cannot be discarded. The fact that the witness has resiled from the earlier statement made in course of investigation puts the Court on guard and*

*cautions the Court against acceptance of such evidence without satisfactory corroboration."*

In the present case, as noted above, apart from the evidence of P.W.-14 Sarju Khan, P.W.-15 Biju Buragohain, P.W.-16 Biju Khan, P.W.-21 Sri Rahul Phukan, P.W.-24 Smt. Chantal Sandra Phukan, P.W.-25 Sri Rodney Phukan, P.W.-26 Sri Sunil Nath, P.W.-27 Kajal Khan, P.W.-33 Sri Prafulla Bora alias Dhekial Phukan who have been declared as hostile, there is no other evidence on record to prove the circumstances against the present accused that while attending a feast in a mosque at Moranhat on 18-05-96 he expressed relief on the assassination of Parag Kumar Das and declared that the death of Parag is good for SULFA activities; that on the previous day of death of Parag Kumar Das, during morning hours, Guli came to the house of Smt. Chantal Sandra Phukan (P.W.-24) with a bluish colour bag and after keeping the said bag in their residence he left; he returned in the afternoon and stayed for the night and also took meals; that accused Mridul also visited their house on the previous day of arrival of Guli; that the bag contained some books and one small size weapon having some pores in the front portion; that on the date of death of Parag Kumar Das Guli left the house in the morning and returned in the evening with the bag; that on the next day in the afternoon he left their house with the bag; that in between 15-05-96 to 18-05-96 Mridul visited the house of Smt. Chantal Sandra Phukan (P.W.-24) and Accused No. 1 Nayan Das alias Guli also visited the said house during that time; that both Guli and Mridul visited the house of a questionable lady at Guwahati one day prior to the killing of Parag Kumar Das and thereafter they left Guwahati on the next day; that both of them were carrying fire arms like Sten gun, AK-47,

pistol etc.; that SULFA activist Diganta also came to Guwahati on the day before killing of Parag Kumar Das and he was not found at Guwahati after death of Parag Kumar Das; that Diganta is a good driver and he also owned one blue coloured Maruti car which actually belonged to accused Mridul Phukan. In the instant case, all the material witnesses referred to above have been declared as hostile. The prosecution though could prove their statements made under Section 161 of Cr.P.C., such statements being not substantive evidence, the said statements cannot be taken into consideration.

As the evidence of the hostile witnesses can be taken into consideration for the purpose of corroboration of the other evidence adduced by the prosecution, in the absence of any other material evidence on record, there is no question of corroboration of the prosecution version by the evidence of the said hostile witness.

P.W.-17 Sri Dhiraj Kalita has stated in his evidence that in the year 1996 he was working as the driver of Asom Jatiya Vidyalaya. As per his version, on 17-05-96 he was sitting inside his bus and at that juncture the school was in session. Suddenly he heard gun shot at the back side of his bus and looking to that angle he saw three persons shooting to one person by means of pistol. The victim fell down on the ground on being hit by the bullets. Due to panic he took shelter inside the bus. Immediately there after the assailants boarded a Maruti Car and proceeded towards Bhangagarh. He has further stated that the age of the assailants was around 29/30 years and out of them two persons was of tall figure and one was of short stature. According to him, during investigation police showed him some photographs. He has further stated that in the

photograph Ext.-6(9) it has been written that the said photo is of Nayan Das. He identified the signature Ext.-6(9) (2) appearing in the said photograph as his own signature. He however stated that now he has forgotten as to why he put his signature in the said photograph.

In the cross-examination, he stated that he heard the gun shots at a distance of about 5 / 6 feet away from the school gate. According to him, he heard the gun shot only once. He also deposed that attackers immediately fled away from the place of occurrence and he could not identify them. In his evidence this witness also stated that during that time there were around hundred people present at that spot. According to him, he noticed only the Maruti Car although there were other vehicles at that place.

The deposition of P.W.-18 Hema Gogoi is that on 17-05-96 he was present in his office situated just opposite of Asom Jatiya Vidyalaya. At around 2.40 p.m., he suddenly heard the sound of bursting crackers out side his office. He came out of the office and noticed one dead body lying at a place 10/15 meters away from the school gate. According to him, he also saw one Maruti car at that place. Later on, he came to know that the said corpse was of Parag Kumar Das who had been gunned down. In his cross-examination, he stated that when he came out of his office he noticed several vehicles moving in that area.

The deposition of P.W.-8 Jyotirmoy Barpujari reveals that during the relevant time he was reading in class VII and he was a student of Asom Jatiya Vidyalaya situated at Rajgarh Road, Guwahati. On 17-05-96, at around 2-30 p.m., while they were taking part in their P.T. class, held inside the school premises, all of a sudden they heard a gun shot, sound like cracker in front of the school gate. Near the brick stack kept in front of the school gate, P.W.-8 saw a

man with a gun in his hand and shooting out to someone. In the meantime, a blue coloured Maruti Van came to that place and the assailant got inside the car and left the place. Later on, he saw that the victim was Parag Kumar Das, who was the father of one of their students. P.W.-8 described the killer as a person of around 5/6 feet in height, healthy, with round face and slight dark in complexion.

According to his version, during investigation, he was shown a pocket album [Ext.-6] containing a bunch of photographs of different persons of similar built and age group and out of the said pictures he identified the photograph of one person [Ext.-6(1)] and he put his signature [Ext.-6(2)] on the said snap as a token of his identification. He further deposed that the name of the person at the back side of that photograph was written as Mridul Phukan @ Samar Kakati.

P.W.-8 has however specifically declared that due to passage of time he is unable to identify the accused in the Court.

In his cross-examination, he deposed that on the date of the alleged incident, he was aged around 13 years. At that point in time, there was a gap between the school boundary wall and the pitch portion of the Rajgarh road. He also confirmed that the Rajgarh road was quite high than the plinth of their school and that generally the school gate remains closed during school hour. At the time of incidence there were students of as many as eight classes and some of the guardians who went to the school to pick up their children were also present at the spot. The further version of P.W.-8 is that on the date of happening, their P.T. class started at 2 p.m.; when they were doing P.T. class they heard sounds of as many as 10/12 fire crackers; having heard those noise they tried to inquire about the occurrence

but their teachers asked them to go inside; when he heard firing sounds there was hardly any person in front of the school gate. He saw one person firing towards the pieces of bricks which were kept in a stack in that place. According to him, he saw the incident for about 3/4 seconds and noticed one blue coloured Maruti van coming there and that person escaping from the place in that van.

He further deposed that after the incidence they were examined by police officers at school for at least 3/4 occasions. They gave their statements before police in their mother tongue. After 7/8 days of the incident some officers visited them with an album and showed some pictures to them. He did not mark if there was any name written on the back side of the said photographs. According to the version of P.W.-8, the photographs were shown to him to ascertain whether photograph of any person of the album resembled the assailant.

The testimony of P.W.-9 Sri Ritu Paban Deka is that on 17-05-96 he was studying as a student of class VII in the Asom Jatiya Vidyalaya situated at Rajgarh Road, Guwahati. On that particular date, at around 2-30 p.m. they were in their P.T. class held within the school premises under the supervision of P.T. teacher Sri Haren Moran. Just then, he heard some sound of cracker outside the school campus. When the students started proceeding towards the school gate P.W.-9 saw one person shooting at someone. The assailant was armed with one weapon which was around 2 feet in length. After firing at the object the said person got inside the vehicle and left the scene. Later on, they came to know that the deceased was Parag Kumar Das whose son was reading in the same school. P.W.-9 also reportedly saw deceased's son Rohan Das sustaining bullet injuries in his hand. The witness described the assailant to be a person having mustache, well built, quite tall, short

hair and stout figure with medium complexion (neither fair nor dark).

He further deposed that during investigation, police showed to him a bundle of photographs of some persons [Ext.-6] and recorded his statement. As per his version, out of the said bundle of photographs, Ext.-6(1) snap was identified by him and he put his signature [Ext.-6(3)] in the said photograph as a token of his identification. In his cross-examination, P.W.-9 confirmed that there was a wall between the road and the school campus and that he saw the incident through the school gate opening which was about six feet breadth. According to him, during the alleged occurrence he was standing at a distance of twenty feet away from the school gate.

According to his testimony, at the time of the alleged incident, the junior classes were over, but the higher classes were still going on and many guardians were waiting outside the school gate to take back their children. During that point of time, having heard some sound, he proceeded towards the school gate and noticed some people running helter-skelter in various directions. He also heard seven gun shots. He further confirmed that police did not show him any negatives of the bundle of photographs [Ext.-6].

P.W.-10 Maharshi Roy Hajong stated in his testimony that in the year 2000, he was posted as the Sub-Inspector of Police, CBI (SCB), Calcutta. According to him, in respect of Case No. RC.4/SCB/97, Inspector S. R. Bandyopadhyay was the registered Investigating Officer and he was the Assistant Investigating Officer. On 09-06-2000 and on 03-07-2000, he was deputed by Superintendent of Police, CBI for recording the memorandum of photo identification of the suspected accused persons by the witnesses. The further version of P.W.-10 is that the Investigating Officer

gave him sixteen photographs of different persons suspected to be involved in the alleged crime, whose names were mentioned in the reverse side of the photographs.

On 09-06-2000, he went to Assam Jatiya Vidyalaya, and called on the principal and requested him to supply the names of two witnesses who were acquainted with the facts of the crime. Accordingly witness Dilip Das and witness Umesh Deka were produced before him along with the other witnesses namely, Azanav Mazumdar, Jyotirmoy Barpujari, Miss Jyotirupa Bora and Sri Dhiraj Kalita. All of them were shown the bundle of sixteen photographs. After going through the photographs, witness Jyotirmoy Barpujari identified one photograph and on the reverse of the said snap it was written Mridul Phukan and Samar Kakati.

According to P.W.-10, witness Jyotirmoy Barpujari made the following statement before him.

“Today I have examined all the Photographs as shown by CBI to me. I identified the photograph of a person whose name is written in the reverse as Mridul Phukan @ Samar Kakati as one of the killers of Parag Kumar Das. He was tall with short hair, well built and fired from a long fire arm towards Parag Kumar Das at the time and date of the incident. He was aged about 29/30 years, having height of 5 feet 8/9”. He was found to be wearing blackish type full pant and white printed shirt.”

The above statement of P.W.-8 Jyotirmoy Barpujari recorded by police officer (P.W.-10) obviously cannot be taken into consideration as evidence.

The further version of P.W.-10 is that the signature of Jyotirmoy Barpujari was taken in the reverse side of photograph and also on the Memorandum prepared at the

spot. When the said Memorandum was prepared, witness Dilip Das [P.W.-31] and Umesh Deka [P.W.-11] were present and they signed in the Memorandum as well as in the identified photograph. Ext.-7 is the Memorandum prepared by P.W.-10 and Ext.-7(1) is his signature. Ext.-7(4) and Ext.-7(5) are signatures of Dilip Das and Umesh Deka.

In his evidence, P.W.-10 further deposed that on 03-07-2000 another Memorandum was prepared by him on the basis of photo identification by P.W.-9 Ritu Paban Deka in presence of two witnesses namely, P.W.-11 Umesh Deka and Khudi Ram Sangma [P.W.-29]. All the 16 numbers of photographs were shown to witness Ritu Paban Deka and he identified the photograph of Mridul Phukan @ Samar Kakati.

The further testimony of P.W.-10 is that witness Ritu Paban Deka stated before him as follows :

“Mridul Phukan @ Samar Kakati is identified by me as tall man having small hair black complexion wearing a blackish full pant and white shirt and was taller than the other accused. He was holding a firearm bigger than the firearm of another person. He was found opening fire from his firearm towards Parag Kumar Das with another accused of short height on the day and time of killing of in front of school gate, Assam Jatiya Vidyalaya, Rajgarh Road. After the occurrence, both the killers sat at the back seat of a Neptune Blue Maruti car and proceeded towards Rajgarh side.”

However, this purported statement by P.W.-9 Ritu Paban Deka before the police officer is admittedly inadmissible as evidence.

P.W.-10 admitted in his testimony that he had no idea where from the bundle of photographs was collected by the P.W.-49 [Chief Investigating Officer]. According to him, the Chief Investigating Officer simply handed over the photographs to him and that no negatives of the snaps or the list of witnesses to be examined were furnished to him by P.W.-49.

In course of his evidence, P.W.-11 Umesh Deka deposed that on 17-05-96 he was attending his duty as the Chowkidar of Asom Jatiya Vidyalaya, Rajgarh Road. At around 2-30 p.m. they heard a sound of gun shot in front of the school gate. When he came out he saw that a man was lying on the road in an injured condition. Immediately thereafter, a man came down from a Maruti car and shot at the injured man. Afterwards, the car left the spot with the four occupants including the driver. According to P.W.-11, the assailant was a person of moderate height within the age group of 29-30 years. Subsequently, he came to know the injured gentleman was Parag Kumar Das, father of student Rohan Das of their school. Rohan Das also sustained some bullet injuries on his hand. He further deposed that on 09-06-2000 police showed some photographs to the witnesses in his presence and the Investigating Officer prepared the Memorandum of Identification. Ext.-7 is the said photo identification memorandum wherein, Ext.-7(5) is his signature. Another photo identification memorandum [Ext.-8] was also prepared on 03-07-2000 by the Investigating Officer wherein, P.W.-11 put his Ext.-8(3) signature.

In his cross-examination, P.W.-11 stated that the span of the school gate was around 2½ / 3 feet and the base of gate was around 6 feet below the road level. According to him, the injured was lying at a distance of around 100 feet near the heap of bricks and that he was the

first person to arrive at the spot. He further opined that at the time of occurrence most of the students came out of the school premises and that many students including the guardians who came to pick up their children from the school were standing outside the school gate.

On the date of the alleged incident P.W.-12 Azanav Mazumdar was also reading in the Assam Jatiya Vidyalaya as a student of Class VII. According to him, on 17-05-96, at about 1-45 p.m., all the students of class VII assembled in the school compound to attend the P.T. class. Suddenly, they heard sound of bullet firing just in front of the school gate. P.W.-12 looked back and noticed two persons with fire arms in their hands shooting at a person. Subsequently, he came to know that Parag Kumar Das had been killed by miscreants. He also saw a blue coloured Maruti Van standing on the road facing towards Bhangagarh side. As per narration of P.W.-12, one of the assailants was tall while the other one was of short height. Both of them were young people. The further version of this witness is that during investigation, the Investigating Officer showed him a bundle of photographs [Ext.-6] having pictures of different persons, suspected to be involved in the alleged crime and out of those snaps, he identified two photographs of Nayan Das @ Guli. He marked those two photographs as Ext.-6(8) and Ext.-6(9) and his signatures appearing therein, as Ext.-6(8)(1) and Ext.-6(9)(1).

In his cross-examination, P.W.-12 stated that at the time of occurrence he was aged around 12 years. According to him, after 3/4 months of the occurrence the photographs were shown to him by the Investigating Officer. He has also admitted that he does not remember the names mentioned on the reverse side of the photographs. P.W.-12 has also mentioned that their school is situated about 6/7 feet below the road level; that the breadth of the school gate is around

2½ feet; that the upper part of the body of a man is visible from the school campus. He however clarified that he saw the whole physique of the two youths as he noticed them through the school gate which was in open condition. He further asserted that he saw the incident from a distance of about 15 meters away from the place of occurrence.

In her testimony, P.W.-13 Miss Jyotirupa Bora deposed that on 17-05-96 she was studying in Assam Jatiya Vidyalaya situated at Rajgarh Road as a student of Class VII. During the relevant time, she was in the school premises to attend her P.T. class. At that moment, all of a sudden the students heard some sound coming from the side of the road. According to her, they saw two persons. One was about 5 feet tall while the height of the other boy was of about 5½ feet. Their age range was 25 to 28 years. Immediately, the two youths went inside one Maruti Car and fled away towards Bhangagarh side. As per her evidence, she saw those two persons from a distance of around 20 feet and at present she does not remember whether those two persons were armed with any weapon. She further stated that the entry gate of the school was around 2½ feet in breath and the school verandah is situated at a distance of about 15 feet away from the said gate. According to estimation of P.W.-13, the distance between the main gate of the school and Rajgarh road will be around 15/16 feet.

In his deposition, P.W.-29 Sri Khudi Ram Sangma has deposed that on 03-07-2000, some CBI personnel came to Jatiya Vidyalaya and they showed some photographs and after identification made on the photographs they prepared a memorandum of identification [Ext.-8] wherein, Ext.-8(4) is his signature as witness.

The testimony of P.W.-31 Sri Dilip Das is also of the same nature with that of P.W.-29. According to his version, on 09-06-2000 he was working at Asom Jatiya Vidyalaya as Grade IV employee. On that day some CBI personnel came to the school for identification of some photographs. Accordingly, after identification being made, police officer prepared one memorandum [Ext.-7] and he was asked to sign in the said document as witness. Ext.-7(4) is the signature P.W.-31. In his cross-examination, the witness admitted that Ext.-7 was written in English and that as he did not know English; he was ignorant about the contents thereon.

According to the testimony of P.W.-20 Sri Biplab Kumar Bagchi on 07-08-97 he was attached to CBI, Special Crime Branch, Calcutta, and on that day on being requisitioned by the Investigating Officer, Inspector, S. R. Bandyopadhyay, he took up investigation of the instant case. On that day he received the original case diary Chandmari P.S. Case No. 207/96 registered U/S 326/302/34 of I.P.C. from S.I. of Police, M. R. Hajong. After perusal of the said cased diary, he went to the house of deceased Parag Kumar Das and examined the witnesses. He also reportedly made some secret inquiry about the suspects and collected some Xerox copies of news items. On 19-08-97, he handed over those documents to the Investigating Officer Mr. S. R. Bandyopadhyay to go ahead with the investigation. In his cross-examination, this witness stated that he examined witnesses namely, Mr. Lachit Bordoloi, Mrs. Purabi Das, [Wife of deceased Parag Kumar Das], Rohan Das [Son of the deceased] and Ajit Kumar Bhuyan. He however admitted that he did not record the statements of the said witnesses and that he simply interrogated them and made a note of that in the diary.

The last witness to be examined on behalf of prosecution is the Investigating Officer Sri Samir Ranjan Bandyopadhyay [P.W.-49]. He deposed in his deposition that after registration of the CBI Case No. RC.4/SCB/97-Cal dated 25-07-1997, Inspector of CBI Sri S.K. Das was initially entrusted with the investigation of the case. Later on, w.e.f. 13-07-1997, he took up the investigation from Sri S.K. Das. During investigation, he examined the Assam Police case diaries and records relating to the said Chandmari P.S. Case No. 207 of 1996 visited the place of occurrence and prepared a rough sketch of the crime scene and took the necessary photographs of the place of occurrence with the help of Police Department, Govt. of Assam. He reportedly collected the Supplementary Case Diary and the necessary documents and paper clippings from Inspector, B. K. Bagchi [P.W.-20].

During investigation of the case, he recorded the statements of deceased's family members including injured Rohan Das and some of the students, teachers and other staffs who, during the time of occurrence, were present at the school or near the place of occurrence. He also examined the adjacent inhabitants of the locality like shopkeepers, hawkers, workers of different offices who were present during the relevant time.

He further deposed that on the basis of the information received from secret sources and also from different witnesses he collected from the Special Branch of Assam Police, a bundle of photographs of the suspects who might be involved with the case. Thereafter, he purportedly arranged for photographs identification parade to be conducted by separate officers. [Ext.-6] is the bunch of photographs collected by [P.W.-49] from the Special Branch, Govt. of Assam. The Investigating Officer also reportedly collected the Post Mortem Report of the

deceased, injury report relating to Rohan Das from Guwahati Medical College Hospital and from Gurucharan Nursing Home.

P.W.-49 also proved the contradictions appearing in the statements of witness Sarju Khan [P.W.-14], Biju Buragohain [P.W.-15], Biju Khan [P.W.-16], Sri Rahul Phukan [P.W.-21], Smt. Chantal Sandra Phukan [P.W.-24], Rodney Phukan [P.W.-25] Sri Sunil Nath [P.W.-26], Kajal Khan [P.W.-27], Sri Prafulla Bora alias Dhekial Phukan [P.W.-33] by marking their version recorded by him as Ext.-22, Ext.-23, Ext.-24, Ext.-25, Ext.-26, Ext.-27, Ext.-28, Ext.-29 and Ext.-30, respectively. Ext.-22(1), Ext.-23(1), Ext.-24(1), Ext.-25(1), Ext.-26(1), Ext.-27(1), Ext.-28(1), Ext.-29(1) and Ext.-30(1) are the signatures of P.W.-49. Subsequently, after completion of the investigation, P.W.-49 filed the relevant charge sheet against accused (1) Nayan Das @ Guli (2) Mridul Phukan @ Samar Kakati (3) Biswajit Saikia @ Tapan Dutta (4) Diganta Kumar Baruah. Ext.-31 is the said charge-sheet whereupon, Ext.-31(1) is the signature of P.W.-49

In his cross-examination, P.W.-49 admitted that apart from the Case No. RC.4/SCB/97-Cal, in respect of the same incident, another case bearing No. RC.3/SCB/97-Cal dated 07-05-97 was also registered by CBI and the said case was also entrusted to him for investigation. According to him, Draftsman A.K. Das of All India Radio, Guwahati, prepared the sketch map of the place of occurrence on the requisition of the CBI.

He further deposed that vide Ext.-34 letter addressed to the Inspector General of Police, Special Branch, Assam, Kahilipara, Guwahati, the S.P., C.B.I., SCB, Calcutta, sought photographs and dossiers of activities of suspected SULFA members. Accordingly, the photographs and other

information pertaining to the eight suspects were furnished to the S.P. from time to time. According to his evidence, he received the said dossiers etc. on 12-01-98 and at the time of receiving the photographs, the negatives were not supplied to them. However, the names of the persons concerned were written on the back of the photographs. According to P.W.-49, when the aforesaid photographs were displayed before the students by him, out of those students, Ritu Paban Deka and Jyotirmoy Barpujari identified the photographs having **resemblance** of accused Mridul Phukan, **but they refused to put their signatures on the back of the photographs.**

P.W.-49 also admitted that he did not examine any police officer to ascertain when and wherefrom those photographs were collected, when the witnesses who have identified the resemblance of the accused person in the photograph above, refused to put their signatures on the back of the photographs. He further contended that he did not submit any prayer to have their statements recorded by Magistrate. According to his version, he collected the photographs from different sources, but he cannot pinpointedly locate those sources. He also admitted that he could not collect the negatives of the photographs.

**It is interesting to note that the prosecution side failed to adduce any evidence regarding the fact as to who collected the bullets that were sent to Forensic Science Laboratory for examination, or regarding the date and place of seizure of the said cartridges and the person who seized those articles.**

According to CBI, as mentioned in their charge sheet, their investigation disclosed that the accused persons namely, Biswajit Saikia @ Tapan Dutta (A-3) and Diganta

Kumar Baruah (A-4) were found at Guwahati on the date of incident and at the place of occurrence with other accused persons in the same Neptune Blue Maruti 800 car at the time of killing of Parag Kumar Das. **But, the car could not be traced out.** However, in the later part of the narration of the charge sheet filed by CBI reveals that their investigation disclosed that the **accused persons used one Neptune blue Maruti-800 car in commission of the offence and that the same car was found abandoned near the place of occurrence** without having any number plate. If this later version is true, the billion dollar question will be what happened to the said abandoned car ? No evidence has been led by prosecution regarding this car that, as per own version of CBI, was found abandoned near the place of occurrence without having any number plate.

In the instant case, admittedly no one knows when and by whom the photographs reported to have been identified by P.W.-8 and P.W.-9 have been taken. The negatives of the said photographs have also not been produced in the Court. It is the rule of prudence that evidence of photographs ordinarily cannot be used to contradict or support the eye witness account and **the identification of the accused in the Court is only the substantive evidence.** In our case in hand, in absence of any material as to who took those photographs or regarding any materials as to who identified those photographs by writing their names in the backside of the said snaps and the negatives of the same being not produced on record, the evidentiary value of those photographs is almost nil.

In D. GOPALAKRISHNAN (Appellant) vs SADANAND NAIK AND OTHERS (RESPONDENTS) reported in (2005) 1 Supreme Court Cases 85 the Apex Court while discussing

the use of photographs by the investigating agency observed as follows:

“ There are no statutory guidelines in the matter of showing photographs to the witnesses during the stage of investigation. But nevertheless, the police is entitled to show photographs to confirm whether the investigation is going on in the right direction. During the course of the investigation, if the witness had given the identifying features of the assailants, the same could be confirmed by the investigating officer by showing the photographs of the suspect and the investigating officer shall not first show a single photograph but should show more than one photograph of the same person, if available. If the suspect is available for identification or for video identification, the photograph shall never be shown to the witness in advance. But in the instant case, the witnesses had not described the physical features of the accused or any identifying characteristics as to how they identified the assailant. **The investigating officer procured the album containing the photographs with the names written underneath and showed this album to the eyewitnesses and recorded their statements under Section 161 of Cr.P.C. The procedure adopted by the police is not justified under law as it will affect fair and proper investigation and may sometimes lead to a situation where wrong persons are identified as assailants.** Even under the provisions of the Police and Criminal Evidence Act, 1984 which is prevalent in England, the photographs could be shown to the witnesses only under certain specified conditions.”  
(Emphasis supplied)

In this respect it is also important to note the observations of the Constitution Bench in **Kartar Singh vs State of Punjab, (1994) 3 SCC 569**:(1994 Cri. L. J. 3139) which struck down Section 22 of the Terrorist and Disruptive Activities (Prevention) Act, 1987. By that provision the evidence of a witness regarding identification of a proclaimed offender in a terrorist case on the basis of the photograph was given the same value as the evidence of a test identification parade. The Apex Court observed in that context:

**“If the evidence regarding identification on the basis of a photograph is to be held to have the same value as the evidence of a test identification parade, we feel that gross injustice to the detriment of the persons suspected may result.** Therefore, we are inclined to strike down this provision accordingly we strike down Section 22 of the Act.” (Emphasis supplied)

It is trite to say that the substantive evidence is the evidence of identification in Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in Court. During the course of investigation, if a person identifies a suspect on the basis of a photograph or Test Identification Parade, the prosecution will be required to examine him as a witness in the Court and the witness will have to identify the accused in the Court. Then alone it would become substantive evidence.

It is well settled that conducting the test identification parade relates to the stage of investigation and the omission to conduct the same will not always affect the credibility of the witness **who identifies the accused in the Court.** it is

well settled that the substantive evidence is the evidence of identification in Court and the test identification parade provides corroboration to the identification of the witness in Court, if required. However, what weight must be attached to the evidence of identification in Court, which is not preceded by a test identification parade, is a matter for the Courts of fact to examine. It is no doubt true that much evidentiary value can not be attached to the identification of the accused in Court where identifying witness is a total stranger who had just a fleeting glimpse of the person identified or who had no particular reason to remember the person concerned, if the identification is made for the first time in Court.

The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. It is also true that much evidentiary value can not be attached to the identification of the accused in Court where identifying witness is a total stranger who had just a fleeting glimpse of the person identified or who had no particular reason to remember the person concerned, if the identification is made for the first time in Court. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in Court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the Court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration.

In the instant case, the alleged incident took place on 17-05-96 and the Memorandum of the photo identification by the witnesses was prepared in the year 2000 i.e. after full four years of the date on which the witnesses claimed to

have seen the attackers. According to P.W.-49, when the aforesaid photographs were displayed before the students by him, out of those students, Ritu Paban Deka and Jyotirmoy Barpujari identified the photographs having resemblance of accused Mridul Phukan, but they refused to put their signatures on the back of the photographs. From the evidence on record and from the submission made by the learned counsel appearing for the prosecution, it appears that they have mainly banked upon the evidence of P.W.-8 and P.W.-9 to establish the fact that the accused Mridul Phukan @ Samar Kakati was involved with the alleged incident. From the topography of the school, as it is found from the testimony of P.W.-9, P.W.-12 and P.W.-13, the distance between the school gate and the front road is around 15 to 18 feet and the plinth of the school is situated around 6 / 7 feet below the road level.

According to P.W.-9, at the relevant time, he was standing at a distance of 20 feet away from the school gate while according to P.W.-12, the distance between the place of occurrence and the place where he was standing was around 15 metres. According to P.W.-13, she witnessed the incident from a distance of about 20 feet. P.W.-8 has also stated in his evidence that the school gate is generally kept closed during the school hour.

It is admitted fact that P.W.-8 and P.W.-9 had no previous acquaintance with the accused. Their narration reveals that they saw the assailants from a distance of about 20 feet through the passage of the school gate. The school campus was admittedly situated at 6 / 7 feet below the road level and there is a boundary wall in the campus. According to the evidence of P.W.-8, he saw the incident for about 3/4 seconds only. P.W.-9 has also admitted that he saw the incident through the opening of the school gate while he was attending P.T. Class in the school ground.

Thus the fact situation that have arisen from the evidence on record that both P.W.-8 and P.W.-9 who were teenagers at the relevant time and were inside a walled campus had the occasion of having only a fleeting glimpse of the assailant from about 20 feet distance through the small passage of the school gate of around 2/3 feet. Therefore, their memory of remembering the face of the attackers whom, admittedly, they had only momentary glance, and that too long after four years of the incident, in my considered opinion, cannot be accepted with certainty as reliable identification.

Out of the witnesses examined by prosecution as eye witnesses of the alleged incident, P.W.-18 Hema Gogoi has simply said that on 17-05-96 while he was present in his office situated just opposite of the Asom Jatiya Vidyalaya, at around 2-40 p.m., he suddenly heard the sound of bursting crackers out side his office and when he came out of the office he noticed the dead body of Parag Kumar Das who had been gunned down lying at a place 10/15 meters away from the school gate. **This witness said nothing about the identity of any assassin.** The other eyewitness Sri Dhiraj Kalita (P.W.-17) has stated in his evidence that on the date of occurrence, while he was sitting inside the school bus at that juncture suddenly he heard gun shot at the back side of his bus and looking to that angle he saw three persons shooting to one person by means of pistol and the victim falling down on the ground on being hit by the bullets. Due to panic he took shelter inside the bus and immediately there after, the assailants boarded a Maruti Car and proceeded towards Bhangagarh. He has further stated that the age of the assailants was around 29/30 years and out of them two persons was of tall figure and one was of short stature. According to him, during investigation police showed him some photographs. He has further stated that in the photograph Ext.-6(9) it has been written that the

said photo is of Nayan Das. He identified the signature Ext.-6(9) (2) appearing in the said photograph as his own signature. **He however stated that now he has forgotten as to why he put his signature in the said photograph.** Therefore, his evidence is also of no relevance in respect of the identity of the accused.

It is found from the evidence of P.W.-12 Azanav Mazumdar that he noticed two persons with fire arms in their hands shooting at a person. In his evidence, he admitted to have identified the photograph of Accused No. 1 Nayan Das @ Guli. As accused No. 1 has already expired, the evidence of P.W.-12 is of no help in respect of prosecution of the present accused.

On the other hand, the evidence of P.W.-13 Miss Jyotirupa Bora reveals that during the relevant time, she was in the school premises to attend her P.T. class. At that moment, all of a sudden the students heard some sound coming from the side of the road. According to her, they saw two persons, one was about 5 feet tall while the height of the other boy was of about 5½ feet. Their age range was 25 to 28 years. Immediately, the two youths went inside one Maruti Car and fled away towards Bhangagarh side. **She did not remember whether the two boys were armed with any weapon or not.** The evidence of P.W.-13 also thus appears to be immaterial in connection with the identity of the present accused.

**It may be mentioned here that P.W.-8 could not identify the accused in the Court.** It is found from the evidence of P.W.-9 that he saw one person shooting at somebody and after firing of the object, the person reportedly got inside the vehicle and left the scene. Admittedly, in his evidence, he did not say that he saw the present accused or the person whose photograph has been

identified by him was the person who was shooting towards the deceased. In his deposition before the Court, he simply stated that he saw one person shooting at somebody. It may be mentioned here that this witness also did not identify the present accused in the Court. The prosecution as it appears also did not put any question to this witness regarding identification of the accused Mridul Phukan in the Court.

In view of the fact that both P.W.-8 and P.W.-9 did not identify accused Mridul Phukan in the Court, the prosecution version of these two witnesses identifying the photograph of the accused, above named, before police cannot be treated as substantive evidence to establish that the accused was the person who gunned down victim Parag Kumar Das.

The cardinal principle of criminal jurisprudence is that the suspicion, however strong, it may be, cannot take the place of proof, and it must be proved beyond reasonable doubt that the accused had committed the offence with which he was charged. One cannot ignore another well settled legal position that even when morally or consciously, the accused may appear to be guilty on the basis of suspicion, it cannot amount to legal proof and he can not be convicted. It is equally well settled that "graver the crime greater should be the standard of proof". Where the murder is cruel and revolting, it is necessary to examine the evidence with more than ordinary care, least the shocking nature of crime induce a reaction against a dispassionate judicial scrutiny of the facts and law. The accused must be and not merely may be guilty, before a Court can convict him. The long distance between "may be" and "must be" has to be travelled by prosecution by legal, reliable and unimpeachable evidence before the accused can be convicted of grave offence like murder.

In the present case it is quite apparent from the discussion above that the prosecution has not been able to adduce any credible evidence to bring home any of the charges leveled against accused Mridul Phukan @ Samar Kakati beyond the pale of doubt. Consequently, he is acquitted from the alleged charges and set at liberty forthwith. He is also discharged from the liability of his bail bond.

Given under my hand and seal of this Court on this 28th day of July, 2009.

SESSIONS JUDGE  
KAMRUP : : GUWAHATI