
(1954) 09 GAU CK 0001

Gauhati High Court (Imphal Bench)

Case No: None

State

APPELLANT

Vs

Ali Hafiz Mia and Others

RESPONDENT

Date of Decision: Sept. 30, 1954

Acts Referred:

- Penal Code, 1860 (IPC) - Section 147, 149, 302, 304, 323

Citation: (1955) CriLJ 705

Hon'ble Judges: Brij Narain, J.C.

Bench: Single Bench

Judgement

Brij Narain, J.C.

1. Ali Hafiz Mia, aged 53 years, son of late Tomba Mia, Kamarudin Mia, aged 26 years, son of Cherali (Sherali) Mia, Isuf (Yusuf) Mia aged 38 years son of late Selungba Mia, Nizamudin Mia aged 35 years, son of late Moha-madali Mia and Bahaodin Mia aged 25 years, son of Cherali (Sherali) Mia, all residents of Irong Basti, Police Station Mayang-Imphal have been charged u/s 302 read with 6, 149, IPC for having along with Samsurudin {Shamsuddin) Maulavi accused, as members of an unlawful assembly and in prosecution of the common object of such assembly viz: to commit murder of Abdul Mia, on 20-1-1953 at 6 A. M, in the paddy field of Irong Chesaba Basti, Police Station Mayang-Imphal committed the offence of rioting and one of the members i.e. Samsuruddin (Shamsuddin) Maulavi committed the murder of Abdul Mia by intentionally causing his death and after striking him with a "Tokshu".

The accused have further been charged u/s 147, IPC for having, along with Samsurudin (Shamsuddin) Maulavi on the aforesaid date, time and place, as members of the aforesaid unlawful assembly and in prosecution of the aforesaid common object, committed the offence of rioting and they have also been charged under" Section 323 read with Section 149, IPC for having caused simple hurt on Ibad

Ullah and Abdul Waheb on the aforesaid date, time and place as members of the aforesaid unlawful assembly and in prosecution of the aforesaid common object. Samsurudin (Shamsuddin) Maulavi accused No. 6 has been charged u/s 302, IPC for having committed the murder of Abdul Mia on 20-1-1953 at 6 A. M. in the paddy field of Irong Chesaba Basti, Police Station Mayang-Imphal when he and other accused formed an unlawful assembly with the common object of committing the murder of Abdul Mia and in prosecution of that common object all of them committed riot. Samsurudin (Shamsuddin) Maulavi has also been charged u/s 147, IPC and u/s 323 read with Section 149, IPC for having caused simple hurt to Ibad Ullah and Abdul Waheb.

2. The facts of the case as alleged by the prosecution are that Abdul Mia (deceased) had purchased the lands of pattas No. 5/349 and No. 5/143 of Irong Basti from Laisemthong Bhu-ban Singh and Abduila Haji. But Samsurudin (Sharasuddin) Maulavi accused along with other accused on the basis of their alleged purchase from Haider Ali P.W. 8 claimed title to these lands and so Abdul Mia brought suit No. 173 of 1950 in the court of the Munsiff, Manipur. This suit was decreed on 11-8-1952 as a result of compromise between Abdul Mia and Haider Ali; and Abdul Mia was declared to be the owner of the whole of the lands under patta Nos. 5/349 and 5/143 vide judgment Ex. P-B and the decree Ex. p-B/1. Abdul Mia secured mutation in his favour in mutation case No. 431 of 1952-53 as against Samsurudin (Shamsuddin) Maulavi accused No. 6 and his party on 22-12-1952 vide the mutation case judgment Ex. P-C and the recovery list Ex. P-I. Abdul Mia and his son Ethoi Mia P.W. 1, Ibad Ullah P.W. 4, Abdul Waheb P.W. 5 and Amu Mia P.W. 6 then entered into possession over these lands and they claimed to have cultivated it subsequently.

On the morning of 20-1-1953 at about 6 A. M., Ibad Ullah P.W. 4 and Abdul Waheb P.W. 5 were watering their chilly plants in these lands when Isuf (Yusuf) Mia, Ali Hafiz Mia, Nizamudin Mia, Kamarudin Mia & Bahaodin Mia accused went there, according to the prosecution, with a spade Ex. P-2, a plough Ex. M-D/I & a pair of bullocks & some sticks Ex. P-2 to Ex. P-8 & they asked Ibad" Ullah and Abdul Waheb, "Who are you, Who are watering, chilly plants here?" Ibad Ullah answered, "The land belongs to my father and we are in possession". Then Isuf (Yusuf) Mia ordered his associates to beat Ibad Ullah and Abdul Waheb and the accused attacked these 2 brothers with lathis. Ali Hafiz Mia caused an Injury on the finger of Ibad Ullah with his lathi, and as this injury was very serious Ibad Ullah raised an alarm saying "Run We are being killed" Abdul Waheb was attacked by Bahaodin accused when he was ordered by Ali Hafiz Mia and Isuf (Yusuf) Mia and then Abdul Waheb cried, "I am being killed. Mother: Mother" and then Abdul Waheb ran away to some distance & Bahaodin Mia attacked him & struck a blow on his head. Abdul Waheb grappled with Bahaodin Mia and then Kamarudin Mia accused gave a blow on his head and so he fell down and became unconscious. Ibad Ullah was also injured on the head by some accused and so he also fell down and both these brothers regained consciousness -in the hospital.

3. On hearing the cries of Ibad Ullah and Abdul Waheb, Abdul Mia rushed to the spot and when he was at a distance of 60 feet from Ibad Ullah, Samsurudin (Shamsuddin) accused who had concealed himself behind the raised wall jumped up saying "The man I waited for has come" and he struck Abdul Mia with the "Tokshu" on the head. Abdul Mia after receiving this injury fell down.

4. On hearing hue and cry at the Ingkhol of Abdul Mia, Hamid Ali Mia P.W. 2 rushed to the spot and he saw Samsurudin (Shamsuddin) Maulavi accused striking Abdul Mia with the "Tokshu" Ex. P-I on the head and he further saw Abdul Mia falling down after receiving injury Samsurudin (Shamsuddin) Maulavi accused was trying to run away, but Hamid Ali Mia caught him and later on the police arrested him. Abdul Aziz P.W. 3 also saw the occurrence and he helped Hamid Ali Mia in arresting Samsurudin (Shamsuddin) Maulavi on the spot. Abdul Mia, according to Hamid Ali Mia became unconscious after receiving these injuries and he was later on taken to the hospital. Amu Mia P.W. 6 saw his father Abdul Mia in injured condition and later on Abdul Mia died in the hospital.

5. Ethoi Mia P.W. 1 reached the spot when Abdul Mia had fallen down after receiving the injury and Hamid Ali Mia had arrested Samsurudin (Shamsuddin) Maulavi on the spot. He found Abdul Waheb and Ibad Ullah also injured and the remaining accused were found by him standing at a distance of 10 to 15 paces from Samsurudin (Shamsuddin) Maulavi. Ethoi Mia then went to Mayang-Impha Police station and lodged the FIB Ex. P-A dated 20-1-1953 there. In this report Ethoi Mia has stated as follows:

My prayer is. Today 20-1-1953 at about 6 A. M. Ali Hafiz Mia and Bahaodin Mia have cultivated the land which is in my father's name by force and the foundation made by me is also dug out. When I asked them not to do so they i.e. (1) Ali (Hafiz) Mia (2) Bahaodin Mia (3) Samsurudin (Shamsuddin) Maulavi (4) Kamarudin Mia (5) Isuf (Yusuf) Mia and (6) Niza-mudin Mia having given blows on Abdul Mia? Waheb Mia and Ibad Ullah Mia with bamboo and wooden sticks and a Tokshu and had broken their heads. They have got serious injuries. They are now in a moribund (very serious condition.) condition. It is, therefore, prayed that an investigation may kindly be held. Dated 20-1-1953.

Ethoi Mia heard the contents of this report after it was read out before him and he verified them to be correct.

6. Shri Khogendra Singh O. O. P.W. 13 wrote out the FIR Ex. P-A, word for word, as dictated by Ethoi Mia P.W. 7, and he registered a case Under Sections 147, 447 and 325 IPC and then he entrusted this investigation to Shri T. Indramani Singh, A. S. I., P.W. 12. Shri T. Indramani Singh reached the spot on 20-1-1953 at 8-30 A. M. and he found Abdul Mia, Abdul Waheb and Ibad Ullah Mia injured and Ali Hafiz Mia, Bahaodin Mia and Kamarudin Mia accused were also found injured and all of them had bleeding injuries. The A. S. I. sent these injured persons to the Mayang-Imphal

hospital after they were first taken to the Thana. The A. S. I. found the Takshu Ex. P-1 on the spot and also the spade Ex. P-2 vide recovery list Ex. P-D. Gani Mia, chaukidar P.W. 10 gave the sticks Ex. P-3 to Ex. P-8 to the A. S. I., on the spot.

7. Dr. H. Yaima Singh Medical Officer, Bishen-pur P.W. 7 who was working as Medical Officer, Mayang-Imphal hospital in January 1953 examined these injured persons sent to him by police on 20-1-1953 in connection with this case. He examined in detail Ibad Ulla Mia P.W. 4 and Kamarudin Mia accused. The following injuries were found on the person of Ibad Ullah Mia at the time of medical examination vide the injury report Ex. P-L:

1. One simple fracture of the proximal phalange of the right index finger.
2. One lacerated wound 1" x 1/6" bone deep on the central part of the head.
3. One bruise mark 2" x 1" on the outer side of the right elbow joint.

Injury No. 1 was serious and the remaining 2 and 3 were simple & were caused by a blunt weapon.

8. Kamarudin Mia accused was found to have received the following injuries

1. One curved lacerated wound 2 1/2" x 1/6" x bone deep on the left side of the head 3" above left ear.
2. One lacerated wound 1 1/2" x 1/6" x bone deep on the right side of the head 3" above the right ear. All these injuries were simple and were caused by blunt weapon vide Ex. D-A.

9. Dr. N. Gulapchand Singh, B. M. O., Civil Hospital, Imphal, P.W. 9 examined Abdul Waheb Mia P.W. 5 at 5 P. M. on 21-1-1953 when the following injuries were found on his person:

1. One contused wound 2 1/2" x 1" x scalp deep on the top of the head running from side to side.
2. One bruise 2" in diameter on the right side of the forehead, vide injury report Ex. P-K. Abdul Mia, Abdul Waheb, Ibad Ullah and Bahaodin Mia were brought to Imphal Civil Hospital at 5 P. M. on 21-1-1953 and Dr. N. Gulapchand Singh P.W. 9 found Abdul Mia's condition critical. Abdul Mia died at 4 A. M. on 22-1-1953 and he did not regain consciousness at all in the Hospital. Dr. N. Gulapchand Singh informed the Police and Shri I. Sarat Chandra Singh S. I.,

P.W. 10 went to the hospital and found the dead body of Abdul Mia in front of the mortuary and he took the corpse in his custody, and he and the panches inspected it. Later on, Shri I. Sarat Chandra Singh prepared the inquest report dated 22-1-1953 vide Ex. P-E and the corpse was then handed over to the R. M. O. for post-mortem examination.

10. Dr. N. Gulapchand Singh P.W. 9 held the postmortem examination of Abdul Mia and the following injuries were found on the corpse:

1. One abrasion is 2"xl" on the left side of the head.
2. One bruise occupying almost the top of the head with abrasions over the scalp.

On opening the scalp blood came out and blood clot was found on the top and left side of the skull, right temporal bone and orbit. One depressed fracture on the right side of the frontal bone in a more or less circular manner 3" in diameter with multiple fragments. Suture of frontal and parietal bone was dislocated throughout. About 6/7 Oz of blood clot was found on the left side compressing the brain upon the membrane which was lacerated 8" in length along the suture. Meningeal artery was ruptured with engorgement in the brain.

11. Death was due to compression of brain as a result of injury on the head which was caused by a heavy blunt weapon vide post mortem examination report Ex. P-J.

12. Shri Khogendra Singh P.W. 13 was busy in investigating a dacoity case on 20-1-1953 and so the investigation of this case was entrusted to the A. S. I. Shri T. Indramani Singh P.W. 12 in the earlier stage. On 22-1-1953 the C. O. received information from Circle Inspector of Imphal that Abdul Mia died and so the C. O. took up this investigation himself. He went to the spot on 1-3- 1953 and he prepared a sketch map along with index vide Ex. P-G and Ex. P-H. The O. O. examined Ibad TJUah, Abdul Waheb. Uamid All and Abdul Aziz on 11-3-1953, but he did not examine any other witness during the course of the investigation.

13. Shri T. Indramani Singh P.W. 12 arrested Samsurudin (Shamsuddin) Maulavi, Nizamudin Mia. and Isuf (Yusuf) Mia accused in the Police Station after they had been taken there and the remaining accused were arrested later on. Shri Khogendra Singh O. C. P.W. 13 after completing investigation challaned the present accused u/s 304, I. P. O read with Section 149, L P. O., on 13-4-1953.

14. All the accused have pleaded not guilty to the charges framed against them and they have denied the charges in the court of the committing Magistrate as well, vide, their statements recorded before the Committing Magistrate on 19-1-1954 and 29-6-1954 vide Ex. P-M and Ex. P-R.

15. Samsurudin (Shamsuddin) Maulavi, Kama-rudin and Bhahaodin are real brothers while Isuf (Yusuf) Mia and Nazimudin Mia are related to Samsurudin (Shamsuddin) Maulavi accused. Samsurudin (Shamsuddin) Maulavi got a sale deed on 16.q_1()50 from Haider Ali P. W 8 for Rs. 100/-for 3 sangams and 1 lowsel land under patta No. 5/ 349L, while Isuf (Yusuf) Mia accused claimed to have got one sangam of land out of the same patta land for Rs. 550/- through the sale deed dated 17-1-1950, and Ali Hafiz accused No. 1 also got a saljp deed regarding one sangam of land of the same"patta on 10-2-1950 from Haider Ali P. W, 8 and these accused have asserted that they were in possession over the land in question through the

above-mentioned deeds.

16. Ali Hanz Mia accused No. 1 has stated that he was working in his field when Abdul Mia and his 4 sons went there armed with lathis and they asked him as to why he was cultivating the field. This accused stated in reply that he had been cultivating it for the last 3 years. Then Abdul Mia and his sons asked him not to cultivate the land and they attempted to unyoke his bullocks. This accused resisted and so Ethoi Mia attempted to strike him with a heavy stick Ali Hafiz Mia asked him not to do so as he wanted to talk with Ethoi Mia; in the meantime Ibadullah struck this accused with a stick on his head. Amu Mia struck him from the opposite direction and so this accused fell down unconscious after receiving a serious blow on his back and he regained consciousness in the hospital.

Ali Hafiz Mia had cried for help at the time when he was being beaten and so Bahaodin Mia and Nizamudin Mia accused had reached the spot. This accused has admitted that he secured the land in question from Haider Ali P.W. 8, but he tried to show that Abdul Mia never interfered with his possession and he had no enmity with Abdul Mia on this account. According to the accused, no incident took place in the chilly field and the plough Ex. M-O/I was in his field. The Tokshu Ex. P-1 is stated to be belonging to Abdul Mia himself, while the spade Ex. P-2 is admitted to be belonging to Bahaodin Mia accused. It has further been denied by the accused that any of the articles Ex. P-3 to Ex. P-8 were taken by any of the accused to the chilly field that morning. This accused has stated that he is implicated in this case because he refused to leave the land which he had purchased from Haider Ali P.W. 8.

17. Kamarudin Mia accused No. 2 has contended that he was in his Ingkhol and on hearing the hue and cry from the field of Abdul Hafiz Mia he went there and he was struck with lathis on the head by Abdul Waheb and Ethoi Mia and Amu Mia. and he became unconscious. He has admitted that his brother Samsurudin (Shamsuddin) Maulavi purchased lands from Haider Ali but he had tried to show that Abdul Mia never interfered with his possession. According to this accused Abdul Mia and his sons went to the field of Abdul Hafiz Mia and picked up quarrel there.

18. Isuf Mia (Yusuf Mia) accused has also tried to show that the trouble took place in the Qeld of Abdul Hanz, but this accused claims to have been at the house of Jafu Mia that morning. Isuf (Yusuf) Mia on coming to know about the incident in Ali Hafiz Mia's field lodged a report in (the police station).

19. Nizamudin Mia was at his house on the morning of O-I-Ifl and he could not know whether any riot took place at all in the chilly field or not. This accused cultivated the land of Isuf (Yusuf) Mia accused and he admitted that his relation Samsurudin (Shamsuddin) Maulavi purchased some lands from Haider Ali under patta No. 5/349 L. But he has tried to show that there was no enmity between Samsurudin (Sham-suddin) Maulavi and Abdul Mia on this account. After he has concluded his statement he stated that he was cultivating his field on that day and Ali Hafiz Mia

also cultivating his field and Bahao-din accused was digging his field with a spade. This accused then was going to Ali Hafiz Mia's field and he heard the latter's cries "I am killed I I am killed" On hearing this, the accused ran to his house saying that there was trouble in the field. According to this accused the prosecution witnesses are inimical to him because he cultivated the land of Isuf (Yusuf) Mia accused.

20. Bahaodin accused was working in the field of Samsurudin (Shamsuddin) Maulavi with a spade on the morning in question. On hearing the cries of Ali Hafiz Mia from his field, he claims to have rushed to the spot, and he saw Abdul Mia, the Tokshu Ex. P-I and the lathis there. This accused has tried to show that Abdul Mia struck him with the Tokshu Ex. P-I and his elbow joint was fractured. The prosecution witnesses are stated to be deposing falsely against him on account of enmity regarding the land.

21. Samsurudin (Shamsuddin) Maulavi has stated that he was in Loutak that morning at a distance of one mile from the field in question and he denied having murdered Abdul Mia. According to this accused Hamid Ali Mia and Abdul Aziz alleged eye witnesses are close relations of Abdul Waheb son of Abdul Mia and the prosecution witnesses are deposing against him on account of enmity regarding the land.

22. The accused have examined Mani Mia and Zamiruddin witnesses to show that they had been in possession over the land in question and it was Abdul Mia and his sons who attempted to take possession over the lands forcibly, and so they were themselves the aggressors. The accused have relied on the injury reports Ex. D~A and Ex. D-B showing that Kamarodin Mia and Bahaodin Mia accused had received serious injuries in this occurrence at the hands of Abdul Mia and his sons.

23. The first question which is to be examined in this case is whether Abdul Mia actually died as a result of injuries which he sustained in the field on Irong Chesaba Basti at about 6 A .M. on 20-1-1953. The fact that Abdul Mia did receive injuries that morning is proved by Kamid Ali Mia P.W. 2, Abdul Aziz P.W. 3, Ibad Ullah P.W. 4 and Abdul Waheb P.W. 5 and who actually saw Abdul Mia receiving serious injuries on the head. Ethoi Mia P.W. 1, Amu Mia P. W, 6 and Gani, Chaukidar, p. W 10 found Abdul Mia injured immediately after this incident and Ethoi Mia lodged the F. I. R. Ex. P-A in the Thana mentioning clearly therein that Abdul Mia, Abdul Waheb Mia and Ibad tTllah Mia had received serious injuries with bamboo, wooden sucks and Tokshu and their heads were broken.

Shri Khogendra Singh O. C. P.W. 13 after registering this report Ex. P-A deputed Shri T.

Indramani Singh, A. S. I. P.W. 12 to go to the spot and investigate this case. Shri T. Indramani Singh reached the spot at 8-30 a.m. and found Abdul Mia injured on the head and very weak, and so he brought him along with the other injured to the Thana and later on he sent him to the Mayanglmphal hospital. The statement of Shri

T. Indramani Singh further shows that Abdul Mia vomitted at the Thana and so his condition was deemed to be very serious on account of injuries sustained by him and he was sent immediately to the hospital. Dr. H, Yaima Singh P.W. 7 sent Abdul Mia injured to the Civil Hospital, Imphal as his condition appeared to be serious and Dr. N. Gulapchand Singh, R, M. O., Civil Hospital, Imphal, actually found Abdul Mia's condition critical when he was brought to the hospital and Abdul Mia actually died at 4 a.m. the same night. He did not regain consciousness at all. The inquest report Ex. P-E was prepared by Shri I. Sarat Chandra Singh S. I., P.W. 11. and the "post mortem examination report Ex. P-J establishes that Abdul Mia died on account of compression of brain as a result of injuries on the head, which were caused by a heavy blunt weapon.

24. All the accused in this case have admitted that Abdul Mia is dead, but they have not admitted that he died on account of the injuries he received during the occurrence which took place on the morning of 20-1-1953. As there is overwhelming evidence referred to above on behalf of the prosecution to establish that Abdul Mia died on account of the injuries which he received on the morning of 20-1-1953, and as this evidence is un rebutted, I come to the definite conclusion that Abdul Mia was actually injured on 20-1-1953 and he died as a result of the injuries which he sustained that morning.

25. The next question which requires consideration is whether the present accused Samsurudin (Shamsuddin) Maulavi had any long drawn out enmity with Abdul Mia and so he kept lying in ambush behind the low wall (bund) in order to attack Abdul Mia when the latter was expected to come to the field in order to save his sons Ibad Ullah and Abdul Waheb. It has been clearly admitted by Ethoi Mia P.W. 1 son of Abdul Mia deceased that Abdul Mia and his sons had no previous enmity with Samsurudin (Shamsuddin) Maulavi accused and the other accused, and the accused had also no prior enmity with any member of Abdul Mia's family. The other prosecution witnesses have not attempted to show that there was any prior enmity between Abdul Mia and Samsurudin (Shamsuddin) Maulavi, and Haider Ali P.W. 8 has admitted in cross-examination that he is related to Abdul Mia as well as to the accused in this case, which means that the present accused are related to Abdul Mia; and so it becomes clear that Samsurudin (Sliamsuddin) Maulavi could not be deemed to have any premeditated plan for committing the murder of Abdul Mia on the morning in question.

There is no doubt that Kamaruddin Mia and Bahaodin Mia are real brothers of Samsurudin (Shamsuddin) Maulavi, wrine isuf (Yusuf) Mia and Nizamudin Mia are also related to Samsurudin (Shamsuddin) Maulavi, but this fact alone cannot be deemed to be sufficient for holding that this accused had any adequate motive of committing the murder of Abdul Mia when it has been established in this case that Sam-surudin (Shamsuddin) Maulavi had no prior enmity with Abdul Mia. Ali Hafiz Mia accused is not related to Samsurudin (Shamsuddin) Maulavi and so he could not

possibly have any prior enmity with Abdul Mia on account of Samsurudin (Shamsuddin) Maulavi.

26. The statement of Haider Ali P.W. 8 no doubt goes to show that Samsurudin (Shamsuddin) Maulavi purchased 3 sangams and 1 lowsel of land under patta No. 5/349 L in 1950 for Rs. 100/- from this witness by means of the sale deed dated 16-9-1950 and Isuf (Yusuf) Mia accused also purchased one sangam land out of the same patta land for Rs. 550/- from this witness through, the sale deed dated 17-1-1950, and a third sale deed regarding one sangam of land of the same patta was sold to Ali Hafiz Mia for Rs. 500/- through the sale deed dated 10-2-1950 and these lands were of different qualities.

27. It has been urged on behalf of the prosecution that the present accused were interested in somehow obtaining possession over these lands mentioned in the above sale deeds, and so all of them had adequate motive for committing the murder of Abdul Mia on the morning in question. I find from the evidence of Haider Ali P.W. 8 in cross-examination that there was no dispute between him and these vendees (accused) after the sale deeds referred to above were executed by him and so it can be safely inferred that these accused actually got possession over the lands purchased by them from him.

28. Abdul Mia claimed to have purchased the land in question from Laisemthang Bhuban Singh and Abdulla Haji (Vide the statement of Ibad Ullah P.W. 4 in his cross-examination) but these witnesses have not been examined in this case. The prosecution relied on the judgment in suit No. 173 of 1950 vide Ex. P-B, but this judgment shows that Abdul Mia brought the suit against Haider Ali P.W. 8, Abdulla and Moirang-them Ningol Apambi Devi and the defendants Nos. 2 and 3 remained absent. The learned Mun-siff decreed the entire suit as against all the defendants even though a compromise had been arrived at between Abdul Mia and Haider Ali only and in the absence of evidence against the absentee "defendants the judgment Ex. P-B and the decree Ex. P-B/I cannot be binding on the remaining 2 defendants and, in any case, this judgment and decree cannot be binding on the present 3 accused who had obtained their sale deeds from Haider Ali in the year 1950 and who had not been impleaded as defendants in the suit No. 173 of 1950.

Reliance has also been placed on behalf of the prosecution on the mutation order dated 22-12-1952 Ex. P-C in which an objection filed by Samsurudin (Shamsuddin) Maulavi was summarily rejected by the Mutation Court on the ground that Abdul Mian had secured the decree in suit No. 173 of 1950. There is no evidence on the record worth the name that the decree in suit No. 173 of 1950 was ever put in execution and Ethoi Mia P.W. 1 has tried to show that possession was given to Abdul Mia on the land in question by the Revenue authorities, which means that the decree No. 173 of 1950 was never executed. There is no document on this record proving that "Ab"dul Mia was ever given actual possession over any portion of the lands sold to the 3 accused by Haider Ali and so it does not appear probable that

Abdul Mia was actually in possession over any of the lands in question before 20-1-1953.

Ethoi Mia P.W. 1 has tried to show that Abdul Mia and his sons had occupied this land for four months prior to this occurrence, but Ibad Ullah P.W. 4 has stated that he and his brothers and father had been cultivating the land in question for 10 years from the date of occurrence. Amu Mia P.W. 6 has gone a step further and he has stated that his father had been in continuous possession over the land in question for 17 or 18 years before this occurrence. Haider Ali P.W. 8 has stated that Abdul Mia got possession over the land in question only 1 or 2 months after the passing of the compromise decree, and before that Haider Ali had been in possession for 3 or 4 years. The decree Ex. P-B/I was prepared on 22-8-1952 and if possession was delivered 2 months after this date Abdul Mia could not have remained in possession for more than 2 months and 28 days up to the date of occurrence. The discrepancies pointed out above go to establish that the prosecution theory that Abdul Mia and his sons had been in possession for about 17 or 18 years, is not correct and if it were so, Haider Ali could not possibly have stated that he was in possession for 3 or 4 years and he could not execute 3 sale deeds in favour of the accused, and Abdul Mia would never have compromised the suit No. 173 of 1950 with him.

29. Ibad Ullah P.W. 4, Abdul Waheb P.W. 5, Hamid Ali Mia P.W. 2 and Abdul Aziz P.W. 3 have tried to show that Abdul Mia and his sons had planted chillies in the field in question and the chilly plants were being watered by Ibad Ullah his brother that day when this trouble ensued. I find in the F. I. R. Ex. P-A that no mention was made by Ethoi Mia P.W. 1 of any chilly plants or that they were being watered on the spot. The P. I. R. Ex. P-A makes a mention of foundation being dug out (dismantled) by the accused and if there had been any truth in the theory that the trouble had ensued when the chilly plants were being watered, this fact would have been clearly mentioned in the F. I. R. Ex. P-A.

Again Sri T. Ihdramani Singh, A. S. I. P.W. 12 went to the spot on the same day at 8-30 a.m., but he was not asked to prepare a map of the locality clearly showing the exact situation of the chilly plants, if they at all existed on the spot. In fact Shri T. Indramani Singh A. S. I. failed to properly investigate the case as he did not comply with the mandatory provisions of law. He claims to have found Abdul Mia in his senses, but he did not record his statement u/s 161, Cr. P. O. He failed to record the statements of other eye witnesses also, and thereby he deprived the defence of the opportunity of contradicting the statements of eye witnesses u/s 162, Or. P. O. He did not prepare any sketch map of the locality either. It is established from his evidence that Abdul Mia, Abdul Waheb, Ibad Ullah, Ali Hafiz Mia, Baha-odin Mia and Kamarudin Mia were injured and all of them had bleeding injuries. If so, some blood marks must have, been found on the spot, The A. S. I. failed to remove blood-stained mud from the spot, if the blood stained mud had been taken and it had been sent for chemical examination by the Chemical Examiner and the Serologist, the place of

occurrence could have been very easily located. But this was not done.

The A. S. I. found some of the bamboo and wooden sticks vide Ex. P-3 to Ex. P-8 blood-stained, but he took no step to send these weapons to the Chemical Examiner or to the Serologist. He did not arrest even Samsurudin (Samshuddin) Maulavi on the spot and if he had come to know there that this accused had actually caused the fatal injury to Abdul Mia, it is impossible to believe that he would have failed to arrest this accused then and there. Under the circumstances mentioned above, the evidence of the sons of Abdul Mia as well as of his relations Hamid Ali Mia (who is the real nephew of Abdul Mia) and Abdul Aziz (whose sister is married with Abdul Waheb son of Abdul Mia and who admits that Abdul Mia was his grand uncle) to the effect that chilly plants had been raised by Abdul Mia on the spot and they were being watered on 20-1-1953, cannot be accepted as correct.

Mani Mia D. W. 1 and Zamiruddin Mia D. W. 2 have clearly stated that the present accused have been in possession throughout and Ali Hafiz Mia accused was actually ploughing the field since early morning that day. No question was put to this witness suggesting that Abdul Mia had chilly plants on the spot, and as the evidence of Gani Mia, Cnaukidar P.W. 10 also proves that the accused were in possession over the land of this patta, I come to the definite conclusion that the prosecution has failed to establish in this case that Abdul Mia and his sons were really in possession over the disputed field on 20-1-1953. No reliance can be placed on the site plan Ex. P-G which was prepared as late as on 1-3-1953.

30. The evidence of Shri Khogendra Singh O. O. P.W. 13 further shows that at the time of his inspection of the locality he found that 20" or 30" x 10" or 12" land had been cultivated on this spot. It has not been suggested by the prosecution that this land was ever cultivated by Abdul Mia and his sons, and so this fact also shows that the present accused were actually in possession over the land in question on 20-1-1953 and earlier.

31. The prosecution has attempted to show that all the accused had the common object of taking possession over the disputed land forcibly and to commit the murder of Abdul Mia and also cause injury to Ibad Ullah and Abdul Waheb, and so the accused Nos. 1 to 5 first went to the spot and started beating Ibad Ullah and Abdul Waheb fully knowing that Abdul Mia would start from his house on hearing their cries. When Abdul Mia actually started for the spot Samsurudin (Shamsuddin) Maulavi accused No. 6 who lay in ambush jumped out from behind the wall and attacked Abdul Mia saying "The man I waited for has come". As Abdul Mia was taken unaware Samsurudin (Shamsuddin) Maulavi and other accused are stated to have got a suitable immediate occasion for committing the murder of Abdul Mia on the morning in question.

According to the prosecution, the Tokshu Ex. P-I belongs to Samsurudin (Shamsuddin) Maulavi accused No. 6, and it has been alleged that the murder of

Abdul Mia was committed by this weapon. The learned Advocate for the prosecution has urged that as the diameter of this Tokshu is about 3" it should be inferred that Abdul Mia was actually done to death with this weapon. The Tokshu Ex. P-I has not been proved to belong to Samsurudin (Shamsuddin) Maulavi and all the accused have emphatically denied this fact. The diameter of this Tokshu is not 3" and as no blood marks proved to have been found on the Tokshu the evidence of the interested witnesses Ibad Ullah and Abdul Waheb, Hamid AH Mia and Abdul Aziz cannot be accepted as correct on this point.

I have already shown above that the present accused were in possession over the land in question and so they had no occasion to take possession over it once again forcibly. Abdul Mia might have considered himself entitled to possession over this land on the basis of the judgment Ex. P-B and. the decree Ex. P-B/I, but this fact alone would not render the present accused liable for the murder in the present case.

32. There are discrepancies in the statements of the prosecution witnesses regarding the dress worn by Samsurudin (Shamsuddin) Maulavi at the time when he jumped out from behind the wall (white dhuti or white lungi) and also regarding the manner in which the blow was struck as some of the witnesses have stated that the accused struck blow with full force on the head of Abdul Mia. If the accused who is a youngman had struck the Tokshu Ex. p-I on the head of Abdul Mia who was aged 60 years, the injury would have been much more serious, and Abdul Mia probably would have died on the spot. But it is clear from the evidence of Shri T. Indramani Singh A. S. I, P.W. 12 that Abdul Mia walked to the Thana after this occurrence and he answered questions put to him intelligently, and so the prosecution case on this point also cannot be deemed to be correct, and I hold that the prosecution has failed to establish in this case that the present accused No. 6 got a suitable occasion on the morning of 20-1-1953 to murder Abdul Mia.

33. Coming to the main question as to whether the present accused, and nobody else, committed the murder of Abdul Mia, I find that the prosecution has examined 4 eye-witnesses including Ibad Ullah and Abdul Waheb injured, son of Abdul Mia, and Hamid Ali Mia and Abdul Aziz. The prosecution has, besides examining these eyewitnesses, relied on the evidence of Ithoi Mia, Amu Mia and Gani Mia, chaukidar to prove that Abdul Mia was actually seriously injured that day and then reliance has been placed on the statements of Dr. H. Yaima Singh and Dr. N. Gulapchand Singh, as well as post mortem examination report Ex. P-J to establish that Abdul Mia died as a result of the injuries which he sustained on the morning of 20-1-1953. I have, therefore, to examine these three sets of witnesses in order to see now far the charge u/s 302, IPC is established against Samsurudin (Shamsuddin) Maulavi and the charges u/s 302 read with 149, IPC and also u/s 147, IPC are established against the remaining accused.

34. I have already shown above that Abdul Mia and his sons were not in possession over the land in question and this land was under the cultivation of the accused, and Ali Hafiz Mia accused No. 1 had been cultivating this land from early morning on 20-1-1953 vide statements of Gani, chaukidar, P.W. 10 and Mani Mia and Zamiruddin defence witnesses. There is no doubt that Gani Mia was declared hostile by the prosecution, but his statement was later on found to be consistent with other circumstances established in this case, and so his evidence has also to be read in the same manner and to the same extent as that of any other witness vide ♦ "Deodhari Koeri v. Emperor" AIR 1937 Pat 34 (A).

Once it is established that the accused were actually in possession over the land in question and they were ploughing it and Abdul Mia and his sons went there to take possession forcibly on the basis of the compromise decree Ex. P-B/I and the judgment Ex. P-B and on the basis of the mutation order Ex. P-C, the present accused would not be guilty of either committing a riot or for causing injuries or even for committing a murder if they merely tried to maintain their possession vide ♦ "Kapildeo Singh v. The King" AIR 1950 FC 80 (B) in which it has been clearly laid down that if a party is forced to maintain or defend his right, it cannot be said that he was determined to vindicate his right by show or use of force; vide also ♦ "Kana v. State" AIR 1952 Madh 205 (C) In which it was clearly laid down that where the other party was found to be the aggressor, the accused could not be deemed to be guilty u/s 147, I. P. O., if they merely repel attacks by the other party.

In view of these rulings when the present accused only tried to maintain their possession, they cannot be deemed to be aggressors. It is admitted by Shri T. Indramani Singh A. S. I., P.W. 12 that Ali Hafiz Mia, Bahaodin Mia and Kamarudin Mia had been injured and they were sent to the hospital and in his statement Dr. N. Gulapchand Singh P.W. 9 has admitted that the dying declaration of Abdul Mia was recorded by Shri Birhari Singh, Magistrate and so it becomes clear that at least three of the accused received very serious injuries during this riot in which they were not aggressors. The injury report Ex. D-B which has been proved by Dr. N. Gulapchand Singh P.W. 9, shows that Bahaodin Mia had received the following injuries ;

1. A bruise 1½" diameter on the left side of the head just above the ear.
2. Contused wound 2" x ½" scalp deep on the top of the head running from backwards to forwards.
3. Dislocation on the left elbow joint Injuries Nos. 1 and 2 were simple while the injury No. 3 was grievous. If the accused had apprehension of death or of receiving grievous injuries they could certainly exercise the right of private defence of the person and property and they could cause even serious injuries to Abdul Mia and his sons who were the aggressors.

35. Again, it has not been proved by the prosecution in this case by any satisfactory evidence that the accused Nos. 1 to 5 ever had any common object of committing

the murder of Aodul Mia. There is not an iota .of evidence on the record to suggest that there is any conspiracy to commit the murder of Aodul Mia and if Samsurudin (Snamsudddin) Maulavi alone thought of striking Abdua Mia on the head when all tne other accused had reached the field, the accused Nos. 1 to 5 cannot be deemed to no guilty u/s 302 read with Section 149, IPC It has been laid down in ♦ [Barsa Majhi and Others Vs. The State,](#), that even where persons are members of unlawful assembly and are guilty of rioting all of them would not be held guilty of dacoity simply because some of them have committed the offence at the Same transaction. The fact that the unlawful assembly, rioting and dacoity formed on♦ transaction would not be enough to make the persons who were not the actual participants in the dacoity liable unless the common object (dacoity) is made out and the case falls within the purview of Section 149, I. P. O.

In the present case before me the alleged transaction in which Abdul Mia was injured by Samsurudin OShamsuddin) Maulavi alone at a distance of about 60 from the place where other accused were, seems to be quite distinct and separate and so the accused Nos. 1 to 5 cannot be made liable u/s 302. I. P." C, as it has not been alleged by the prosecution that they caused any injury whatsoever to Abdul Mia. The ruling in AIR 1937 Pat 34 (A) already referred to above also lays down that merely coming to the spot with lathi or weapon in response to cry of accused that he was being killed is not sufficient to make such person guilty of rioting.

The ruling of ♦ [Ram Charan Rai and Others Vs. Emperor,](#) which lays down that under B. 149, IPC the liability of the other members for the offence committed during the continuance of the occurrence rests upon the fact whether other members knew beforehand that the offence actually committed or likely to be committed in prosecution of the common object. Such knowledge may reasonably be collected from the nature of the assembly, arms, or behaviour at or before the scene of action. If such knowledge may not be reasonably attributed to the other members of the assembly then their liability for offence committed during the occurrence does not arise. In the present case no common object of all- the accused for committing the murder of Abdul Mia has been established and as the accused Nos 1 to 5 did not commit any act in this connection and they did not cause any injury to Abdul Mia they cannot be held constructively liable u/s 149, IPC Vide also ♦ [Suba Chaudhury and Others Vs. The King,](#)

36. The learned Advocate for the prosecution has argued that the evidence of Ibad Ullah, Abdul Waheb, Hamid Ali Mia and Abdul Aziz should be believed as against the accused Sa,msunjdin (Sham-suddin) Maulavi. I have already pointed out above that these witnesses I-Iamid Ali Mia, Ibad UUah and Aodul Aziz are not impartial as they are related to Abdul Mia and his sons and so they are interested in securing the land in question for the latter. If these witnesses had really seen Sam-surudin (Shamsuddin) Maulavi striking a terrific blow with the Tokshu Ex. p-i on the head of the late Abdul Mia, their statements must have been recorded by Shri T. Indramani

Singh A. S. I., P.W. 12 during the investigation, but the latter has stated that he did not examine any witness u/s 161, Cr.PC on the spot. If these witnesses had really informed the A. S. I. that they had seen Samsurudin (Shamsuddin) Maulivi actually causing serious injury on the head of Abdul Mia, the A. S. I. would surely have arrested this accused on this spot but this was not done. Even the experienced O. C. Shri Khogen-dra Singh P.W. 13 did not think it worthwhile to record the statement of the alleged eyewitnesses immediately after the death of Abdul Mia. He has come forward with the allegation that he was ill, but this allegation has not been substantiated

The statements of these witnesses were recorded u/s 161, Cr.PC about 3 months after the alleged incident when the place of occurrence is only 1 miles from the police station. For important criminal cases it is the duty of the police to reduce to writing the statements of eye-witnesses, particularly, as contemplated by Section 161 (6), Cr.PC Failure to perform the duty enjoined by law constitutes a flagrant attempt to circumvent the law & thereby to defeat the right which law bestows on the accused u/s 162, Cr.PC It has been laid down in [Harinarain and Another Vs. The State](#), that if the defence is not supplied with the copies of the statements of the witnesses examined by the police, the testimony of those witnesses should be rejected in toto. Even if such a hard punishment is not proposed on the prosecution, it cannot be disputed that the right of, the accused to get copies of the police statements is curtailed and as the accused are deprived of the valuable right of putting the testimony of the witnesses to the touch-stone of cross-examination, their case is likely to be seriously prejudiced. As the evidence of these eye witnesses was not recorded by Shri T. Indramani Singh A. S. I. immediately after the occurrence and as these witnesses did not give any tangible information to him, their statements recorded about 3 months after, and later on in courts cannot be accepted at their face value especially when they are full of grave discrepancies. These witnesses have tried to show in this Court that Abdul Mia became unconscious immediately after receiving the Tokshu injury and he fell down on the ground. But this version is effectively contradicted by Shri T. Indramani Singh, A. S. I., P.W. 13 who has clearly stated that Abdul gave intelligent answers and he went to the Thana on foot with the A. S. I.

Apart from the minor discrepancies regarding the dress of the assailant, there is a very grave discrepancy in the statement of the alleged eyewitnesses regarding the spot where Abdul Mia was alleged to have been injured. Hamid Ali Mia P.W. 2 has stated that Abdul Mia was struck when he was sianduv and not while he was running and at that time Abdul Mia was facing towards the South. This witness has further stated that the place where Abdul Mia fell down at a distance of 60" from the place where he was struck with the TOKShu Ex. P-I. Later on, however, he has stated that Abdul Mia has fallen down at the place where he was struck and he remained unconscious up to the time when police came. Abdul Azia P. VV. 3 has stated that Abdul Mia fell down after receiving the blow and he became unconscious" wnicii

means that he did not run to a distance of 60" as was stated by Hamid Ali Mia P.W. 2. Abdul Aziz heard the alarm of "Ima Ima" (mother mother; and he has stated that he could not recognise whose voice it was, but Hamid Ali Mia has stated that the alarm was raised by Abdul Waheb by crying "Hamid Ali Hamid Ali I am killed I am killed"

It is alleged that both the eye-witnesses had gone to the spot together, but even then there is such a serious discrepancy in their statements. Hamid Ali Mia and Abdul Aziz have stated that Samsurudin (Shamsuddin) Maulavi was arrested by Hamid Ali Mia witness, but Ibad Ullah P.W. 4 in the court of the committing Magistrate stated that Hamid Ali Mia and Abdul Aziz had both caught hold of Samsurudin (Shamsuddin) Maulavi on the spot. Ibad Ullah has further stated that Abdul Waheb had raised an alarm "We are being beaten" and not "Ima Ima". Abdul Waheto has stated that he cried out "I am being killed". Abdul Waheb and Ibad Ullah were grappling in "Mugna" position with the accused i.e., they were holding the loin cloth of the accused and so their eyes must have been towards the ground, and they could not possibly be expected to see Abdul Mia being injured at a distance of 60" from them. The statement of Hamid Ali Mia P.W. 2 in cross-examination shows that when he and Abdul Aziz reached the spot, Ali Hafiz Mia, Karnarudin Mia and Bahaodin Mia were lying on the ground and as these accused and Ibad Ullah and Abdul Waheb appear to have fallen down simultaneously it becomes clear that Abdul Mia was attacked subsequently for Hamid Ali Mia and Abdul Aziz claim to have seen Abdul Mia being injured subsequent to their reaching the spot and before that time Ibad Ullah and Abdul Waheb as well as the accused had fallen down. All these facts clearly go to show that the alleged eye witnesses in this case are not at all reliable and as they are going to exaggerate matter to any extent, their evidence cannot be deemed to be sufficient in any manner to establish the charge of murder as against the present accused.

37. Ethoi Mia P.W. 1, Amu Mia P.W. 6 and Gani Mia chaukidar, P.W. 10 did not see the occurrence and they reached the spot subsequently. The evidence of Gani Mia chaukidar however, goes to support the defence case to a very great extent as it establishes that the accused were in possession over the land in question (and not Abdul Mia and his sons) on 20-1-1953.

38. The medical evidence on this record does not in any way connect the present accused with the murder in question, and it does not go to show in any manner that the present accused were the aggressors. I am, therefore, of opinion that the prosecution has in this case failed to establish that the present accused were the aggressors and they attacked Ibad Ullah and Abdul Waheb in their chilly field when the latter were watering the chilly plants and the evidence on this record shows that Abdul Mia and his sons themselves went there to take possession over the field which was being cultivated by Ali Hafiz Mia and others and as Abdul Mia and others used force and caused serious injuries to the 3 accused the accused were entitled to

exercise their right of private defence of person and property in maintaining their possession over the disputed field and so Samsurudin (Shamsuddin) Maulavi cannot be deemed to be guilty u/s 302, IPC nor can the accused Nos. 1 to 5 be deemed to be guilty u/s 302 read with Section 149, I. P. O.

39. I have already mentioned above that the present accused never formed an unlawful assembly and they merely acted in the exercise of their right of private defence and they did not exceed that right as such none of them can be deemed to be guilty u/s 147, IPC

40. Regarding the charge u/s 323 read with Section 149 is concerned, I have merely to mention that the evidence on this record goes to establish that the present accused did not cause any injury to Abdul Mia, Ibad Ullah and Abdul Waheb except in the exercise of their right of private defence of person and property when Abdul Mia, and his sons as aggressors appeared to have gone to the field to take forcible possession over it. In any case this charge has also been not established against any particular accused for inflicting any injury on any particular victim and so I hold that none of the charges have been established against any of the accused beyond any reasonable doubt, and the accused are entitled to benefit of doubt in this case.

41. Three assessors have, found Samsurudin (Shamsuddin) Maulavi guilty Under Sections 302, 147 and 323 read with 149, IPC but one assessor holds him not guilty under all these sections. For reasons given above, I agree with the latter and disagree with the former."

42. Ali Hafiz Mia, Karnarudin Mia, Isuf (Yusuf) Mia, Nizamudtn Mia & Bahaodin Mia are held to be not guilty u/s 302 read, with 147 by all the Assessors & I agree with this opinion. Two Assessors have found all these 6 accused guilty u/s 147, IPC but one assessor has found them not guilty under this section and another has found Ali Hafiz Mia accused also not guilty under this section, but the remaining 5 accused are found to be guilty by him under this section. For reasons given above I agree with one assessor who finds all the accused not guilty under these sections, and also with the assessor who finds Ali Hafiz Mia not guilty under this section.

43. Regarding the charge u/s 323 read with Section 149, IPC three Assessors have found all the accused guilty but one assessor has found them not guilty. For reasons given above, I agree with the latter and I disagree with the former.

44. The result Is that the charges u/s 302 read with Sections 149, 147 and 323 read with 149, IPC are found to be not established against Ali Hafiz Mia, Kamarudin Mia, Isuf (Yusuf) Mia, Ni- zamudin Mia and Bahaodin Mia and the charges Under Sections 302, 147 and 323 read with Section 149, IPC are held to be not established beyond all reasonable doubt against iSamsurudin (Shamsudin) Maulavi and so all the accused are acquitted of the charges mentioned above.

45. Samsurudin (Shamsuddin) Maulavi and Kamarudin Mia accused will be set at liberty forthwith unless they are required in connection with any other case. Ali Hafiz Mia, Isuf (Yusuf) Mia, Nizamudin Mia and Bahaodin Mia are already on bail. They need not surrender and their bail bonds are discharged.

46. The Tokshu Ex. P. 1 will be forfeited to the Government after the expiry of the period of appeal if any appeal is preferred after this decision. The spade Ex. P-2 will be returned to Bahaodin Mia accused, while the plough Ex. M-D will be returned to Ali Hafiz Mia after the expiry of the same period. The sticks Ex. P-3 to P-8 will be destroyed after the expiry of the same period. In the event of any appeal being preferred, these material exhibits will not be submitted to the Hon"ble Supreme Court unless ordered to the contrary.