

**JUSTICE S. N. PHUKAN
COMMISSION
OF ENQUIRY**

REPORT

JORHAT

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মাসজিদ/হিন্দু মন্দির



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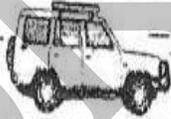
মুন্সেফুরা হাট



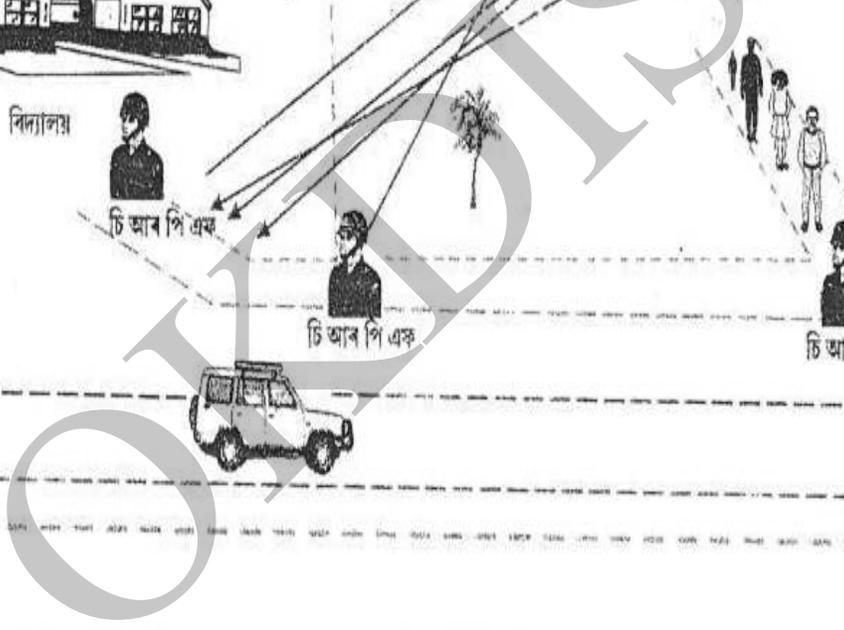
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This Commission was constituted by the Government of Assam in the Department of Political (A), Dispur vide Notification No. PLA 307/2008/2 Dated. 7th June' 08. The entire Notification including terms of reference of the Commission is extracted below: -

“GOVERNMENT OF ASSAM
POLITICAL (A) DEPARTMENT:::DISPUR
ORDERS BY THE GOVERNOR
NOTIFICATION

Dated Dispur, 7th June' 2008

No. PLA 307/2008/2: In exercise of the power conferred under Section 3 of the Commission of Inquiry Act, 1952, the Governor of Assam is pleased to constitute an one Man Commission of Inquiry to be headed by Justice (Retd.) S.N. Phukan, retired Judge of Supreme Court of India, New Delhi, to enquire into circumstances leading to the killing of Dulen Baruah son of Late Dimba Baruah of village Himpara, P.S. Moran in the district of Sivasagar on 13/4/2008.

The terms of reference of the Commission of Inquiry shall be as follows: -

1. To ascertain circumstances leading to the killing of Dulen Baruah, son of Late Dimba Baruah, village Himpara under Moran P.S. of Sivasagar district on 13/4/2008.
2. To ascertain if any person (s), organisation (s) are responsible for the incident.

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3. To ascertain the truth regarding allegations of harassment of the local public in Himpara area on 13/4/2008.
4. To determine if there was any lapse on the part of any authority, and, if, so, to fix responsibility thereof.
5. To suggest measure(s) to be taken to prevent recurrence of such incidents, and
6. Any other matter which is relevant to the incident as may be decided by the Commission.

The Commission of Inquiry will submit its report within 6 (six) months from the date of issue of this Notification.

-Sd- S.C. Das,

Principal Secretary to the Govt. of Assam,
Home & Political Department.”

Initially, the Commission was granted six months time from the date of the issue of the Notification to submit the report. The term was however extended twice for six months each vide Notification No. PLA 307/2008/29 Dated Dispur 6th December' 2008 and Notification No. PLA 307/2008/33 Dated Dispur 5th June' 2009.

The Commission received the Notification of the State Government dated 7th June' 2008 on 19/6/08 at Guwahati and took charge on 22/6/08. The Government appointed Sri Ashim Kumar Chetia, A.C.S the then Addl. Deputy Commissioner as Secretary of the Commission who took over charge on 15th July 2008.

During General Elections to the Lok Sabha, Mr. A.K. Chetia was transferred and posted at Nagaon in the same capacity and he

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relinquished the charge of the office of the Secretary of the Commission on 5th March' 2009. Thereafter, Mrs. Tamiza Rahman, Addl. Deputy Commissioner, Jorhat was appointed as Secretary of the Commission and she took over charge on the same day.

The Deputy Commissioner, Jorhat by letter dated. 22nd July' 08 informed the Govt. of Assam, Home & Political Department regarding arrangement of rooms one car, one computer etc for the Commission. The Superintendent of Police, Jorhat also provided the personal security officer to the Commission. Necessary members of the staff were also appointed. The Commission appointed Sri Rahul Bezbaruah, Advocate as a counsel for the Commission and on his resignation Smti Chandana Kausik Baruah, Advocate, Jorhat was appointed in his place.

The Commission framed its Regulation of the Commission, and a copy was sent to the Government.

The Commission issued notice dated 22nd September' 2008, which was published in news papers, calling for statements/affidavits from the persons acquainted with the subject matter of the enquiry or who were acquainted with the facts and circumstances leading to the subject matter of the enquiry and persons who were interested in the subject matter. Time for submission of statements/affidavits and appearance of persons either personally or through counsel/authorised representative was granted upto 3rd November' 2008.

In response to the above notice, the Commission received statements from Mr. N.M. Hussain, I.A.S, Deputy Commissioner, Sivasagar, Mr. Shyamal Prashad Saikia, APS Supdt. of Police, Sivasagar,

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Mr. Ashutosh Agnihoti, I.A.S., Deputy Commissioner, Dibrugarh and Mr. Anurag Agarwal, I.P.S Supdt. of Police, Dibrugarh. In addition to the statements/affidavits received from the above Govt. officials, the Commission also received a joint statement filed by Sri Pranab Chetia, Sri Sidhartha Dutta and Sri Pulin Das stating that they represented Sivasagar unit of All Assam Students Union (in short AASU) on 3/12/08.

The Commission may state here that inspite of notice being issued calling for statements/affidavits from the concerned persons, except the affidavits filed on behalf of Sivasagar unit of AASU, no other statement/affidavit was received from any members of the public or any interested persons. Nobody also appeared before the Commission.

The Commission is of the opinion that the occurrence took place on 13/4/2008 and the notice dated 27th September' 2008 was issued by the Commission and in view of the delay people possibly lost interest, therefore nobody came forward either for filing statements/affidavits or appearing before the Commission. It was very unfortunate.

As stated above on 3/12/2008 Sri Pranab Chetia, Sri Pulin Das and Sri Sridhartha Dutta appeared on behalf of Sivasagar unit of AASU and stated that they would file their statements supported by affidavits which they did and on the same date Sri Srimanta Baruah S/o. Late. Dulen Baruah and Sri Dilip Baruah, S/o. Late. Bhabendra Nath Baruah both from village Rangali Himpara gaon, where the occurrence took place, appeared before the Commission and expressed their willingness to file their statements of the facts. The Secretary of the Commission and also the learned Counsel for the Commission explained

S. M. Baruah

to them the procedure of filing such statements. Both of them prayed for time to file statements and they were directed to do so on the next date of hearing.

On the next date of hearing of the Commission i.e. on 19/12/2008 the Secretary of the Commission informed that Sri Srimanta Baruah and Sri Dilip Baruah contacted him over phone informing that they would file their statements before the next date.

Except appearance of Sri Srimanta Baruah and Sri Dilip Baruah of Rangali Himpara village, the Commission did not receive any response from other persons of the above village. It was therefore decided to visit the place of occurrence which would be necessary to appreciate the evidence on record and the circumstances leading to the occurrence.

On 1st of March' 2009, the Commission accompanied by Mr. A.K. Chetia, Secretary of the Commission visited Himpara village under Moranhat Police Station of Sivasagar district. The Secretary of the Commission has also drawn up a memorandum of inspection. No sketch-map was drawn up as the Commission was satisfied with the sketch-map prepared (annexed with this report) by Mr. H.C. Dutta, Addl. Deputy Commissioner, Sivasagar, who conducted an enquiry at the residence of Late. Dulen Baruah, as per order dated 14th April' 2008 of the District Magistrate Sivasagar. In the said order Mr. H.C. Dutta, Additional District Magistrate, Sivasagar was directed to conduct a Magisterial enquiry to ascertain the circumstances leading to the death of Late. Dulen Baruah and man handling of the family members of the deceased, and the

S. M. Chetia

circumstances under which Dibrugarh Police alongwith CRPF conducted operation in the Sivasagar district without involving Sivasagar district police. The Commission shall deal with the said report at the appropriate place. When the Commission visited Himpara village accompanied by the Secretary of the Commission, Mr. Shymal Prashad Saikia, Supdt. of Police Sivasagar, Mr. H.C. Dutta Additional District Magistrate, Sivasagar, Mr. Dhiren Hazarika, S.D.O. (C), Charaideo, Mr. Prafulla Deuri, Circle Officer, Moranhat Rev. Circle, Mr. Dimbeswar Bora, Circle Officer, Moran Rev. Circle and O/C, Moranhat Police Station also were present at the house of Late. Dulen Baruah The Commission arrived at the house of Late. Dulen Baruah at 11.30 a.m., met the family members, relatives and neighbours. About 18 persons were present in the compound of Late. Dulen Baruah. The names of the above persons are indicated below:

1. Sri Nomal Ch. Gogoi, S/o. Lt. Kamal Gogoi, age – 56 years, cultivator resides opposite to the house of Lt. Dulen Baruah, distance about 100 mtrs.
2. Sri Siddheswar Baruah, S/o. Lt. Chandra Kt. Baruah age – 65 years, cultivator resides near tiniali distance about 500 mtrs.
3. Sri Arun Buragohain, S/o. Lt. Dilibar Buragohain age – 64 years, distance about 300 mtrs.
4. Sri Dhaniram Baruah, S/o. Lt. Dimbaram Baruah, age – 71 years, elder brother of Lt. Dulen Baruah Kudar gaon Borbil distance about 1 k.m.
5. Sri Tankeswar Gogoi, S/o. Lt. Bhogeswar Gogoi, age – 75 years distance about 1 k.m.

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6. Sri Premo Baruah, S/o. Lt. Dehiram age – 59 years, cultivator, Botua distance about 8 k.m.
7. Sri Nakul Baruah, S/o. Lt. Sitaram Baruah, age – 58 years, cousin of Lt. Dulen Baruah, No. 2 Borbil distance about 200 mtrs.
8. Sri Upen Baruah, S/o. Lt. Dimbanath age – 65 years distance about 300 mtrs. (Elder brother of Lt. Dulen Baruah).
9. Sri Sambhuram Baruah, S/o. Lt. Dimbanath age – 62 years, distance about 500 mtrs. (Elder brother of Lt. Dulen Baruah)
10. Sri Jiuram Baruah, S/o. Lt. Homeswar Baruah, age – 62 years, distance about 200 mtrs.
11. Sri Hemakanta Baruah, S/o. Lt. Dimbanath Baruah age – 53 years, (Younger brother of Lt. Dulen Baruah) No. 2 Borbil distance about – 1 – 1 ½ k.m.
12. Smti Lily Baruah, W/o. Lt. Dulen Baruah, age – 45 years.
13. Sri Srimnta Baruah, S/o. Lt. Dulen Baruah.
14. Smti Renu Baruah, W/o. Sri Gobin Baruah (Sister in law Lt. Dulen Baruah), neighbour.
15. Sri Gopal Charingia, S/o. Lt. Khogen Charingia, Student, age – 18 years neighbour.
16. Smti Kumali Gogoi, W/o. Lt. Joheswar Gogoi, age – 80 years (Neighbour)
17. Sir Umakanta Gogoi, S/o. Late. Chandra Gogoi, age – 42 years serving as WCCI. in OIL. Moran residing at village Himpara at a distance of about 200 mtrs.

S. M. Gogoi

18. Sri Jiban Baruah, S/o. Sri Upen Baruah age – 33 years cultivator, residing at a distance of about 500 mtrs.

The distances indicated above are from the house Late.

Dulen Baruah.

After interacting with the above persons the Commission found Smti Lily Baruah, W/o. Late Dulen Baruah, Sri Srimanta Baruah S/o. Late Dulen Baruah, Smti Renu Baruah W/o. Sri Gobin Baruah (Sister-in-law of Late Dulen Baruah) neighbour, Sri. Gopal Charingia and Smti Kumoli Gogoi W/o. Late Joheswar Gogoi Neighbour, (age-81 years) were eye witnesses and that apart Sri Umakanta Gogoi and Sri Jiban Baruah claimed to have first hand knowledge of the incident. The Commission decided to examine the above witnesses except Smti Kumali Gogoi due to old age and ill health.

Some of the above person present stated that they were assaulted by security personnel and were given medical treatment at Assam Medical College Hospital, Dibrugarh. The Commission decided to examine the doctor in this regard.

During local inspection the above members of the public requested the Commission to examine the witnesses at Moran as they expressed their difficulty to come to Sivasagar or to Jorhat. Accordingly on 16/6/09 the Commission visited Moran and examined 6 witnesses namely Smti Lily Baruah, (CW-12) Sri Srimanta Baruah, (CW-13) Smti Renu Baruah, (CW-14) Sri Gopal Charingia, (CW-15) Sri Umakanta Gogoi (CW-16) and Sri Jiban Baruah (CW-17) at Moran PWD I.B. While examining the above witnesses the Secretary of the Commission Smti

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Tamiza Rahman, Mrs. Chandana Kausik Baruah, Advocate for the Commission and Sri S. Seal, Advocate for Sri Tuleswar Lahon were present. On that day ASEB arranged uninterrupted electric power supply for the entire day and therefore the Commission could examine all the witnesses. Sri Manuj Kr. Gharphalia, Jr. Assistant of the Office of the Circle Officer, Moran recorded the evidence of the witnesses in the computer and copies of the evidence were made available to the Counsel present. The Commission also expressed appreciation to the persons who made all the arrangements for sitting of the Commission at Moran including Sri Prafulla Kumar Deori, Circle Officer, Mahmora.

In the Affidavit filed on behalf of AASU it was stated that from news paper reports and also from members of the public they came to know that on 13/4/08 while Late. Dulen Baruah after "Lighting Pradip" in the Namghar went to his house, some unknown persons shot him dead inside his compound and also assaulted his wife Smti Lily Baruah and son Sri Srimanta Baruah, in the name of finding out whereabouts of extremist persons. Thereafter, all the above three persons along with some other members of AASU went to the house of Late. Dulen Baruah and came to know from the members of the family that Sri Tuleswar Lahon, a surrendered ULFA of Moran, shot dead Late. Dulen Baruah and physically assaulted his wife and son. They also came to know that an FIR was filed at Moranhat P.S. at Sivasagar stating that Sri Tuleswar Lahon was the murderer. According to them on 28/4/08 respected Chief Minister visited Moran and assured the member of the family to ensure justice and also Government service to one person of the

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family members of Late Dulen Baruah. The financial help was given and a job was also given to a family members of Late Dulen Baruah, namely his son Srimanta.

We may state here that after filing the above statement members of AASU Sivasagar neither appeared before the Commission nor adduced their evidence in spite of notices given to them.

In view of specific allegation made in the above statement filed on behalf of Sivasagar Unit of AASU the Commission issued show cause notice to Sri Tileswar Lahon and he has sent his reply to the notice. He was represented by Sri S. Seal, Advocate. The Commission may also state here that in the FIR filed at Moranhat P.S. by Sri Srimanta Baruah, S/o. Late. Dulen Baruah the name of Sri Tileswar Lahon was also mentioned as the murderer of his father.

Sri Lahon has categorically stated that the allegations against him were false, concocted and malafide without having any substance. According to him after surrendering as a member of ULFA he is living a peaceful life. He has stated that he is now a reputed businessman and his rival parties are trying to damage his business and goodwill. He has referred to the FIR filed at Moranhat P.S. vide P.S. Case No. 62/08 by the Commanding Officer, G/149 Bn CRPF. He has taken the stand that the said FIR is relevant for his defence. He has further stated that Moranhat P.S. Case No. 63/08, which was filed for the same occurrence belatedly, implicating him in the offence which according to him is false and fabricated.

S. N. Seal

Mr. Nawab Mahmood Hussain, Deputy Commissioner, Sivasagar has filed an affidavit before the Commission. He has stated that on 13/4/08 at about 7.30 p.m. Mr. Manabendra Dev Rai, Addl. S.P. Sivasagar informed him over phone that members of CRPF were conducting operation to nab ULFA extremists at Himpara village under Sivasagar district and also about the death of Dulen Baruah due to firing. He was further informed that Moranhat P.S. of Sivasagar district was not involved in the said operation. He asked Mr. Dev Rai immediately to visit the place of occurrence. At about 9.00 p.m. Mr. Dev Rai confirmed over phone about the incident. Mr. Hussain informed the Principal Secretary, Home & Political Department, Dispur. He also directed SDO Saraideo at Sonari to depute a Magistrate to conduct inquest etc.

On 14/4/08 in the morning Mr. Hussain was informed over phone from Moranhat P.S. that the dead body was delivered by CRPF to the Moranhat P.S. alongwith an FIR and seized articles and handed over three persons namely Sri Hiteswar Konwar, Sri Srimanta Baruah S/o. Late. Dulen Baruah and Sri Jiban Baruah. After sometime Mr. Dev Rai further informed Mr. Hussain from Moran that Sri Sarat Saikia, Parliamentary Secretary along with a large number of villagers gathered at Moranhat police station demanding immediate release of Sri Srimanta Baruah and Sri Jiban Baruah alleging that they were innocent. The members of the public also claimed that the presence of Srimanta Baruah and Sri Jiban Baruah was necessary to perform the last rites of deceased Dulen Baruah. Thereafter they were released. But Sri Hiteswar Konwar was kept in police custody. After postmortem at about 3.00 p.m. on

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14/4/08 the dead body was brought to the Moranhat P.S. and Mr. Hussain directed SDO Sonari to accompany the dead body with police and hand over to the family members for cremation. Thereafter Mr. Hussain proceeded to the place of occurrence and arrived at Moranhat P.S. where he met Sri Sarat Saikia, Parliamentary Secretary Govt. of Assam, the local MLA who informed him that Law & Order situation in the village at the place of occurrence may deteriorate as large number of people including some organizations have gathered there. Therefore, Mr. Hussain proceeded to Himpara village alongwith Sri Saikia and found large number of agitated crowd demanding action against the guilty and arrest of one SUIFA namely Sri Tuleswar Lahon, who according to the members of the public was part of the team conducting operation. Mr. Hussain assured that an enquiry would be conducted by an Additional District Magistrate. Mr. Hussain consoled Smti. Lily Baruah and Srimanta Baruah, wife and son of the deceased. He found both of them were shocked due to alleged beating repeatedly by the police. He also found injuries on the person of Smti Lily Baruah. He assured both of them would be sent to Assam Medical College, Dibrugarh for treatment, which was done on 15/4/08 by taking them for treatment to Dibrugarh by a Government ambulance. He directed SDO (C), Charaideo, Sonari to pay Rs. 10,000/- to Smti Lily Baruah to perform the last religious rites of the deceased, which was accepted reluctantly. After cremation and as the situation in the village was brought under control, Mr. Hussain directed Sri H.C. Dutta, Addl. District Magistrate, Sivasagar to conduct an enquiry.

S. Hussain

The Commission has received the enquiry report Dtd. 27/6/08 of Sri H.C. Dutta which shall be considered at the appropriate place.

Mr. Ashotosh Agnihoti, I.A.S, the then Deputy Commissioner of Dibrugarh district by his letter No. DCL 1/2008/410 dtd. 17th November' 08 addressed to the Secretary of the Commission, has stated that he received a report from the Superintendent of Police, Dibrugarh vide his letter dtd. 24/4/08, a copy of which has been annexed. He has also stated that he was on casual leave from 12th to 18th April' 08 and on his return he saw a copy of the order passed by the District Magistrate, Sivasagar directing a Magisterial enquiry. It is not necessary to state here the report of the Superintendent of Police, Dibrugarh as it will be discussed while considering the statement of the Superintendent of Police, Dibrugarh.

Exbt.-6, the report of the Deputy Commissioner, Dibrugarh to the Principal Secretary to the Govt. of Assam, Home & Political Department and Exbt.-7 the report of the Superintendent of Police, Dibrugarh to the District Magistrate, Dibrugarh.

Mr. Anurag Agarwal, I.P.S, the then Superintendent of Police, Dibrugarh has also filed a verified statement Exbt.-5. From the above statement and his letter to the District Magistrate, Dibrugarh Exbt. - 7, the following facts have emerged.

That on 13/4/08 at about 10.30 a.m. the officer in-charge, Moran P.S. received a source information that a group of dreaded ULFA cadres including Rudra Gogoi and Baba Dadhara, who were wanted in number of cases of Moran and other police stations of Dibrugarh district

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were spotted in and around Thengal and Ghugulani area under Moran P.S. After receiving this information O/C, Moran P.S. requisitioned one platoon of CRPF personnel from 149 Bn. CRPF Camp Bamunbari. Thereafter the O/C Moran P.S. proceeded to Thengal and Ghugulani area along with his other police personnel and CRPF. Both the O/C of Moran P.S. alongwith state police and CRPF personnel went to the above villages and came to know that the above group of dreaded ULFA cadres went towards Oufolia and accordingly the above party went towards that area. There they came to know from sources that the above ULFA cadres went to Rangoli Himpara village. The police and CRPF team decided to pursue the ULFA militants and went towards Rangoli Himpara under Sivasagar district. The O/C, Moran P.S. telephonically informed Mr. Anurag Agarwal S.P. Dibrugarh, the fact of entering Sivasagar district. The police and CRPF team divided themselves into 3 groups—one team consisting of CRPF personnel led by Mr. Achala Ram, Asstt. Commandant and other two teams consisting of Assam Police personnel decided to carry out search operation in two different places of Rangoli Himpara area. While the search operation was going on, the CRPF team saw one TATA Sumo vehicle coming towards Himpara village and they stopped the vehicle and asked the persons to get down from the vehicle and enquired about their identities as well as where they were going. The driver identified himself as Sri Hiteswar Konwar. The CRPF party checked his mobile phone where they found the phone numbers of top ULFA leaders namely Sri Jiten Dutta, Sri Rudra Gogoi, Sri Laden, Sri Baba Dadhara and others. The names were recorded in his mobile hand set. On further sustained

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interrogation Sri Hiteswar Konwar disclosed that he was sent by his sister Putu, who was a member of ULFA to pick up Sri Rudra Gogoi, Sri Baba Dadhara, Smti Bohagi Baruah and others from the house of Late. Dulen Baruah of Himpata village. At that time there was a phone call from Rudra Gogoi on the mobile phone of Sri Hiteswar Konwar. The CRPF party asked Hiteswar Konwar to switch on the speaker of his mobile who heard that Sri Rudra Gogoi enquired about the whereabouts of Sri Hiteswar Konwar and asked him to go to the house of Late. Dulen Baruah. Immediately Sri Achala Ram alongwith his QRT got into the TATA Sumo vehicle and asked Sri Hiteswar Konwar to take them to the house late Dulen Baruah where ULFA Cadres were taking shelter and accordingly Hiteswar Konwar drove the vehicle. Before reaching the house of Late. Dulen Bauah Sri Hiteswas Konwar was asked to make a phone call to Sri Rudra Gogoi saying that he should come and take the vehicle to the house, on the pretext that Hiteswar Konwar forgot the location of the house. This was with the purpose of apprehending Sri Rudra Gogoi out side the house of Late. Dulen Baruah. But instead of coming out of the house he sent one boy to meet Sri Hiteswar Konwar for taking him to the house of Late Dulen Baruah. Thereafter CRPF team decided to go directly to the house of Late. Dulen Baruah to raid it. On reaching near the house of Late. Dulen Baruah, the CRPF personnel got down from the vehicle. As they were approaching the house of Late. Dulen Baruah, where members of ULFA were taking shelter they started firing at the CRPF team. The CRPF personnel took position and on self defence they retaliated. The firing continued for ½ hour from the side of

the house of Late. Dulen Baruah. Thereafter the CRPF team also stopped firing. Then they moved towards the house. It was around 6.30 p.m. in the evening and it was dark. On the courtyard of the house of Late. Dulen Baruah, the CRPF party found one person lying injured. In the mean time reinforcement team of CRPF also arrived with a doctor. On examining the injured person, the doctor declared him dead. The CRPF team searched the house and the premises, found that taking advantage of darkness and thick vegetation around the house, the ULFA cadres managed to escape. Later the deceased person was identified as Late. Dulen Baruah of Himpara village, who was also the owner of the house where the militants were taking shelter. In the mean time officer-in-charge of Moranhat P.S. and his police team arrived. Mr. Anurag Agarwal, I.P.S. has stated that as soon as the officer in-charge of Moran P.S. informed that the police team of Dibrugarh District was pursuing the group of dreaded ULFA and entering in the Sivasagar district, he immediately informed Mr. Manabendra Dev Rai, Addl. S.P. of Sivasagar, over phone who was in-charge of the office of the Superintendent of Police. Mr. Agarwal also informed the Deputy Inspector General (I.R), Jorhat.

The Superintendent of Police, Sivasagar Mr. Syamal Prasad Saikia filed a detail report vide Memo No. SBR/V/2008/4805 Dtd. 20/11/08. Alongwith the report he has annexed photocopies of ITR, GD Entries of Moranhat P.S., Seizure list, inquest and post mortem reports. Subsequently he filed an affidavit as required under regulation of the Commission.

S. N. Saikia

From the above report the Commission finds that Mr. Saikia was out of station on 13/4/08 as he had to perform annual Sardha ceremony of his father. On 14/4/08 he was informed over mobile phone by Sri Manabendra Dev Rai, Addl. Supdt. of Police, H.Q regarding the incident at Himpara village under Moranhat P.S. Dist. Sivasagar. He immediately after completion of religious ceremony rushed to Sivasagar district even without completion of the reception held on the occasion of Sraddha ceremony and arrived at Moranhat P.S. on 14/4/08. On investigation he found that Sri Achala Ram, Asstt. Commandant of 149 Bn CRPF of Bamunbari lodged an FIR at Moranhat P.S. stating about the incident on 13/4/08 resulting in the death of Dulen Baruah. In the FIR it was also stated inter-alia, that one suspected ULFA militant Sri Hiteswar Konwar and two other persons were apprehended. Mr. Saikia stated in the affidavit regarding recovery of 10 nos. of empty cartridges of unknown bore, 8 nos. of live ammunition of A.K. 47 rifles, explosive, one demand note on the letter pad, of ULFA and a flag, 3 nos. of mobile hand set, one purse containing Rs. 3690/- and one TATA Sumo vehicle bearing registration No. NI. 04-C-806 used by the suspected ULFA militants. Mr. Saikia has also mentioned about the death of Late. Dulen Baruah, who according to him died in the cross-firing between CRPF and the militants. Mr. Saikia further stated in the affidavit regarding information over phone given by Mr. Anurag Agarwal, S.P. Dibrugarh regarding movement of ULFA in that area and operation by the security force to Mr. Dev Rai, Addl. S.P. Sivasagar. He has confirmed the statement of Mr. Dev Rai, that Sri Agarwalla on being offered help of

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Sivasagar Police by Mr. Dev Rai refused and Mr. Agarwal stated that if such help would be required Mr. Dev Rai would be informed.

Now let us extract the relevant portion of the affidavits filed by the persons of Rangoli Himpara Village where the occurrence took place. Sri Dilip Baruah has stated in his affidavit that at about 11.00 a.m. on 13/4/08 Army personnel went to their village and at about 12 noon they went to his house and enquired about the persons who were in his house. According to him he came to know that the security personnel took all the boys of the village and kept them at a particular place and interrogated them. Some ladies of the village requested the security personnel not to keep the boys on the day of Goru Bihu. At about 4.30 p.m. the boys were released and the security personnel left their village. According to this witness he went out side his house and after sometime he heard gun shot and went back inside the house. Next day at about 7.00 a.m. he came to know that some persons, assaulted some of the villagers and Late Dulen Baruah, Sri Srimanta Baruah and Sri Jiban Baruah were not in their house. Thereafter he along with some ladies of the village went to the Moranhat police station and there he saw Sri Srimanta and Sri Jiban inside the police station and also the dead body of Dulen Baruah in a vehicle. He was sent by police alongwith Sri Joyram, nephew of Late Dulen Baruah with the dead body to Joysagar for conducting postmortem examination.

Smti Renu Baruah has stated, inter-alia, in her affidavit that houses of the village were searched; young boys were apprehended and assaulted. The boys were taken near the vehicle and there after they were

Smti Renu Baruah

kept in a house. She along with some other ladies went and requested the CRPF party to release the boys. One jowan of the CRPF played one Hindi cassette and asked the ladies to dance. But she alongwith other ladies declined as they could not dance to the tune of Hindi song. Thereafter she alongwith 3 other ladies started to sing and dance. At that time two persons in civil dress carrying gun came to the place and directed that boys should be released. Thereafter the above security personnel in a white Tata Sumo vehicle went towards Bishrupur. After about one hour they came back in the vehicle and stopped in a Tin Ali. Two persons in civil dress came out of the vehicle and started running towards the house of Late Dulen Baruah. While running they started firing from the gun towards his house. She also saw Sri Srimanta Baruah and Sri Jiban Baruah getting down from the said vehicle. Out of fear she went back to her house. She also heard from house that members of the CRPF used slang words saying that they provided food to the members of the U.L.A. She also heard Lily Baruah requesting not to assault her deaf and dumb boy and also the sick boy. She heard sound of beating by lathi. She also heard some altercation. At about 1.30 a.m. she heard the sound of vehicle going away.

Sri Umakanta Gogoi of village Rangoli Himpara in his statement has stated that on the day of Gorubihu in the year 2008 at about 10.00 a.m. the Army personnel searched every houses of the village and there after they left in the afternoon. In the evening at about 5.00 p.m. he went to the field near the house of Dulen Baruah to enquire from the boys about celebration of Bihu festival. When he

S. in 1/2/08

reached near the house of Dulen Baruah he saw one vehicle coming at a high speed and stopped near the School and then went towards the house of Dulen Baruah. Two persons got down from the vehicle and started firing from their guns. Three of the above security personnel went towards the house of Dulen Baruah and one of them asked him to stand and raise his hand. At that time Lily Baruah, W/o. Dulen Baruah came near him and the above security personnel asked her and her deaf and dumb son to raise their hands. All three of them were led to a drain near the School and asked them to lie in the drain and assaulted them with bamboo. They heard sound of gun firing. Thereafter they were taken to verandah of the school where they met Sri Jiban Baruah, Sri Srimanta Baruah and some other boys whom he could not recognize. Thereafter one by one the boys were assaulted and asked them to disclose whereabouts of the lady militant ULFA. This witness has stated that he was assaulted. After some time they were kept inside the vehicle. At about 2 a.m. he alongwith Smti Lily Baruah and Sri Biju Baruah were asked to get down from the vehicle. Then he went to the house of Smti Lily Baruah with great difficulty as he was suffering from pain due to assault. Sri Jiban Baruah and Sri Srimanta Baruah were taken to the vehicle. In the house of Smti Lily Baruah they found that all the articles were scattered. Smti Lily Baruah and her son Sri Biju Baruah were taken by Sri Umakanta to his house. Next day in the morning he went to the Dispensary for treatment and in the afternoon he came to know that Dulen Baruah was shot dead.

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Smti Lily Baruah, W/o. Late. Dulen Baruah of Rangoli Himpara village stated in her affidavits that in the evening of the Gorubihu i.e. 13/4/08 her husband Late Dulen Baruah went to Namghar. She after collecting three cows went out again in search of other cows. At that time one person asked her to go back to her house. After coming back she saw her son Sri Biju Baruah and Sri Umakanta Gogoi standing in front of her house raising their hands. Thereafter all the above three persons were taken to a drain and were asked to lie down. Security personnel assaulted them and at that time they heard firing from the gun. The above personnel also abused them in slang language. All of them were taken to the verandah of the School and asked them to sit down. She was asked where she allowed the ULFA persons to go and thereafter she was given a slap on her cheek. Sri Umakanta Gogoi and Sri Jiban Baruah were also assaulted. She begged that her two boys may not be assaulted. But they did not listen. They were taken to the vehicle and thereafter at about 1.00 a.m. all of them were released. She found her articles inside the house scattered. Thereafter she went to the house of Sri Umakanta. Next morning she found that her husband was not in the house.

Sri Jiban Baruah of Rangoli Himpara Village has stated in his affidavit that on 13th April' 08 at about 5.00 p.m. he went in search of his cattle. Near the school Tin Ali of his village he saw one white Tata Sumo vehicle. One person in the vehicle asked him from where he was coming and he replied that he went in search of his cattle. He was asked to get inside the vehicle and was taken to the field of the school. He alongwith

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Sri Srimanta were asked to lie down on the drain. Thereafter the above persons started firing towards the house of Late Dulen Baruah for about 20/25 minutes. After half an hour they were asked to get up from the drain and took them to the verandah of the school. He saw Smti Lily Baruah and Sri Umakanta Gogoi. They were taken to the vehicle and for 20/25 minutes they were kept inside the vehicle. At about 1 a.m. Smti Lily Baruah, Sri Biju Baruah and Sri Umakanta Gogoi were allowed to go. But he and Srimanta were taken to Moran P.S. and thereafter they were taken to Bamunbari CRPF camp. From the said camp they were taken to Moranhat P.S. and handed over to the police. Next day when some ladies from the village came to the police station he and Srimanta were released.

Sri Srimanta Baruah S/o. Late. Dulen Baruah of Rangoli Himpara village has stated in his affidavit that on 13th April' 08 at about 12 noon CRPF personnel conducted search of the houses of the villagers of Rangoli Himpara including his house. After the search was over in the evening he alongwith his friends went out to discuss about celebration of Bihu. They saw a white Tata Sumo vehicle standing at Tin Ali of their village. One person from the vehicle asked him to get inside the vehicle. He refused, but he was threatened that he would be killed. Thereafter he got inside the vehicle and saw five persons inside the vehicle. Except the driver all other persons were holding guns and were lying down inside the vehicle. Out of the above five persons, three persons were in civil dress. They enquired his name, place of residence etc. which he replied. The vehicle after going for sometime stopped in front of the school. The above persons inside the vehicle got down

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from the vehicle in a hurry and started firing towards his house and assaulted him. He has specifically stated that he could identify one person who assaulted him namely Sri Tileswar Lahon. Sri Lahon enquired from him whether some members of the ULFA were residing in his house. One person enquired from him whether he could recognize him as he took meal in their house. The said person also assaulted him stating that he had kept numbers of ULFA in their house. Thereafter many vehicles arrived at the village and in one vehicle all of them were kept inside. At about 1 a.m. he alongwith Sri Jiban Baruah were taken to CRPF camp at Bamunbari. While taking them away they were assaulted. They were given meal but he could not take meal as blood was coming from his nose and mouth. At 3.30/4 a.m. they were handed over to Moranhat P.S. and kept in the lockup for 3 hours. Till that time he did not know what happened to his father. Next day at about 10 a.m. when some persons including ladies came to the police station they were released.

The Commission would like to state here that the Deputy Commissioner and the Superintendent of Police of Dibrugarh and Sivasagar districts in their affidavits stated that they would not like to examine any witness or engaged any Counsel on their behalf. The Commission after going through the records and with the help of the Counsel for the Commission made a list of twenty four persons to be examined.

As no Counsel was available for other persons the Counsel for the Commission assisted the Commission in examining the witnesses. It may be stated that Sri Tileswar Lahon engaged Mr. S. Seal, Advocate

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who cross examined some witnesses on the limited point regarding involvement of Sri Tuleswar Lahon in the incident.

The Commission would like to extract some relevant portion of the evidence of witnesses so examined.

CW-1 is Mr. Nawab Mahmood Hussain, I.A.S., Deputy Commissioner, Sivasagar. He has stated that on 13/4/08 at about 7.30 p.m. Mr. Manabendra Deb Rai, Addl. Superintendent of Police (HQ), Sivasagar informed him over phone that Dibrugarh police with CRPF party conducted operation to nab ULFA extremists at Himpara village of Sivasagar District and one Dulen Baruah (aged about 65 years) was killed due to firing. He has proved his affidavit filed before the Commission and marked as Exbt-1. The copy of his order for Magisterial enquiry, which was conducted by Mr. H.C. Dutta, Addl. District Magistrate, Sivasagar was marked on Exbt-2. In cross-examination by Mr. Seal, Advocate for Sri Tuleswar Lahon, he has admitted that in Para-4 of his affidavit he has stated that some members of the public demanded action against SUIFA extremist Sri Tuleswar Lahon. But he has not stated in his affidavit this fact. He has also admitted that he received numbers of memoranda from the public. He has also admitted that he has no personal knowledge of the incident except the memoranda received from the public and enquiry report of the police.

Mr. Syamal Prasad Saikia, Superintendent of Police, Sivasagar has been examined as CW-2. He has stated that on 13/4/08 he was on leave and out of station. He took leave for performing the sraddha ceremony of his father and that Mr. Manabendra Deb Rai, Addl.

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Superintendent of Police, (HQ) was in-charge. Exbt. -3 is the affidavit filed before the Commission. He has also submitted detail report regarding death of Late. Dulen Baruah on 13/4/08 and Exbt.-4 is the said report. Alongwith the report he has annexed the photocopies of the FIR, the GD entries, seizure list, inquest report and post mortem report. According to him while performing the sraddha ceremony of his father he was informed at about 9.00 a.m. on 14/4/08 regarding death of Dulen Baruah and immediately he left his house and rushed to Moranhat P.S. to take stock of the situation. He came to know that dead body of Dulen Baruah was handed over to his family members.

In cross-examination by Mr. S. Seal, Advocate for Sri Tileswar Lahon he has stated that he examined the FIR filed by Mr. Achla Ram, Asstt. Commandant, CRPF at Moranhat P.S. and from the FIR he came to know that Dulen Baruah died due to cross firing between the members of the ULFA and the operational team of police and CRPF of the Dibrugarh district. Police team from Sivasagar district went to the place of occurrence after the incident.

CW-3 is Mr. Anurag Agarwal, IPS was the Supdt. of Police, Dibrugarh on the date of occurrence. He has filed an affidavit which was marked as Exbt-5. Alongwith the affidavit he has annexed copies of the FIR, and GD entries of two police stations. He has also given call details of his Mobile phone number regarding his talk with Mr. Manbendra Dev Rai, Addl. Supdt. of Police, Sivasagar. In cross-examination by Mr. S. Seal, Advocate he has stated that according to his affidavit during night he

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went to the place of occurrence after getting information that an encounter took place between security forces and ULFA extremists at Rangoli Himpara village in which the owner of the house Dulen Baruah was killed in cross firing.

Mr. Ashutosh Agnihotri, I.A.S. the then Deputy Commissioner, Dibrugarh was examined as CW-4. He has stated that he was on leave from 12/4/08 to 18/4/08. He got information from the Supdt. of Police, Dibrugarh (CW-3) over phone that Late. Dulen Baruah died on 13/4/08. On return from leave he came to know that the Deputy Commissioner, Sivasagar ordered Magisterial enquiry regarding the incident. He informed the Principal Secretary to the State Government, Home & Political Department by letter dated 24/4/08 with copies to the Principal Secretary to the Chief Minister and the Chief Secretary. Exbt-6 is the said letter. He had no personal knowledge about the incident. On being cross examined by Mr. S. Seal, he has admitted that in his report to the Commission he stated that from the perusal of the report of the Supdt. of Police, Dibrugarh it appeared that Dulen Baruah died due to cross firing between ULFA and CRPF.

CW-5 is Sri Manbendra Deb Rai, Addl. Superintendent of Police, Sivasagar. He has stated on oath that on 13/4/08 he was holding the charge of the Office of the Supdt. of Police Sivasagar, who was on leave. Regarding death of Dulen Baruah of Rangoli Himpara village under Moranhat P.S., on 13/4/08 he has stated that Dulen Baruah died due to cross firing between CRPF personnel and ULFA extremists. He gave detail report to the Supdt. of Police, Sivasagar and Exbt-8 is the said

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report. He has stated, on being asked by the Commission, that he received telephonic information from the Supdt. of Police, Dibrugarh that police party was conducting operation against ULFA extremists at Himpara village under Moranhat P.S. District Sivasagar. He offered armed police personnel of Sivasagar District to help such operations, but the Supdt. of Police Dibrugarh informed that no such assistance was required at that moment, but he would be informed if such assistance was required in future. He informed the O/C of Moranhat P.S. about this matter.

In cross-examination by Mr. S. Seal, Advocate he has stated that Late. Dulen Baruah died due to cross firing of CRPF and ULFA extremists and Moranhat P.S. case No. 63/08 was registered.

CW-6 is Mr. Jayanta Sarathi Bora, Sub-Divisional Police Officer, Charaidew, Sonari. He has stated that on 13/4/08 at about 8.30 p.m. the Addl. S.P. Sivasagar informed him over telephone that an encounter took place in the village of South Himpara under Moranhat P.S., which was within his jurisdiction, between suspected ULFA militants and the operational team of Dibrugarh police and CRPF from Dibrugarh District. He was also informed that Late. Dulen Baruah was killed in the encounter at his house. As per instruction of the Addl. S.P., Sivasagar, next morning at about 6 a.m. he reached Moranhat P.S. and alongwith S.I. Debajit Das O/C of Moranhat P.S. they went to the place of occurrence and conducted further search at the place of the occurrence. They found 11 nos. of empty cartridges of AK 47 rifles and 3 nos. of empty cartridges of unknown bore. The above articles were seized by the O/C of

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Moranhat P.S. They returned to the P.S. to supervise legal formalities such as conducting inquest and sending the dead body for post mortem examination. The inquest was conducted by the Sub-Divisional Officer (C), Charaidew, Sonari. After the post mortem examination, the dead body of Late. Dulen Baruah was brought back to Moranhat P.S. and was handed over to the family members of the deceased at his house. At that time local MLA Sri Sarat Saikia, the Deputy Commissioner, Sivasagar, the Addl. S.P. (HQ), Sivasagar, S.D.O. (C), Charaideo, Sonari and himself were present during handing over the dead body. Various organisations tried to create Law and Order problem, demanding that an enquiry be conducted to find out the cause of death of Late. Dulen Baruah. However, after persuasion of the gathering by Sri Sarat Saikia, the Deputy Commissioner, Sivasagar the Addl. Supdt. of Police, (HQ), Sivasagar S.D.O. (C), Charaideo, Sonari and himself no Law and Order problem was created.

CW 7 is S.I. Debajit Das who was the officer in charge of Moranhat P.S., Sivasagar on 13/4/08. From his evidence the Commission finds that at 1.45 p.m. Sri Manbendra Deb Rai, Addl. Superintendent of Police (HQ), Sivasagar informed him over mobile phone that police and CRPF personnel were coming from Dibrugarh district to conduct operation against extremists in the area covering Rangoli Himpara village. As the area of operation was within his jurisdiction as precautionary measure he put NAKA at the exit points of four villages to prevent the escape of extremists. At about 6.30 p.m. while he arrived at Bistrampur village in his vehicle, he heard sound of firing of gun coming

from Himpara area and he immediately informed over phone Sri Manabendra Deb Rai, Addl. S.P. Sivasagar. He got down from the vehicle and with his police party walked through paddy field towards the village from where firing of gun shot was coming. At about 7-50/8.00 p.m. he reached South Himpara village and saw one dead body. Mr. Achala Ram, Asstt. Commandant of CRPF informed him that the death was caused due to cross firing between ULFA extremist and security personnel. The doctor of CRPF declared the person dead. Later on he came to know that due to insufficient light and in absence of a Magistrate the inquest of the dead body could not be done. The Supdt. of Police, Dibrugarh arrived at the place of occurrence and the dead body was taken to Moranhat P.S. Next day the inquest was conducted by S.D.O. (C), Charaideo, Sonari and the dead body was sent to Sivasagar for post mortem examination. After arrival of the dead body it was handed over to the family members of the deceased and at that time officials, and local persons were present. The FIR was filed by Mr. Achala Ram and Moranhat P.S. Case No. 62/08 was registered and investigated. This witness conducted the investigation. Mr. Achala Ram produced the seized articles along with the seizure list. This officer also seized the articles again from Mr. Achala Ram who also produced Hiteswar Konwar who was formally arrested by this witness. From this witness we find that empty cartridges alongwith the weapons carried by CRPF personnel were not sent for Forensic examination.

CW-8 is SI Sri Kumud Chetia who took over charge as Officer-in-charge of Moranhat Police Station, Sivasagar after transfer of

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S.I. Debajit Das (CW-7) has produced the case diary of Moranat P.S. Case No. 63/08, which was registered on the basis of FIR filed by Sri Srimanta Baruah, S/o. Late. Dulen Baruah. In the FIR it was stated that his father was killed by gun shot fired by hired killer of some SULFA. According to him Sri Tuleswar Lahon obtained an anticipatory bail from the High Court vide order dated. 11/6/08. This witness so far has examined thirteen witnesses in the above case and it was ready for final report. He also produced Moranhat P.S. case No. 62/08, which was registered on the basis of FIR filed by Mr. Achala Ram of CRPF. The case has been pending for investigation.

CW-9 is SI Makhon Bora who was the officer in-charge of Moran Police Station on 1/2/08. He has given evidence regarding Moran P.S. case No. 59/2006. The statement of this witness is not relevant for the purpose of present enquiry. CW-10 is Mr. Haresk Ch. Dutta, who was the Addl. Deputy Commissioner, Sivasagar. This witness conducted Magisterial enquiry as per order of the Deputy Commissioner, Sivasagar. During enquiry he examined four official witnesses and ten other witnesses from the members of the public. Exbt.-10 was his report. The report would be considered subsequently.

CW-11 is Mr. Achala Ram who was Asstt. Commandant of CRPF G-149 camp at Bamunbari on 13/4/08. On that date about 10.30 a.m. the officer in-charge of Moran P.S. went to him to requisition one platoon of CRPF stating that Sri Rudra Gogoi, Sri Baba Dadhara and some other ULFA militants were hiding in the villages of Thengal and Ghuguloni. At about 11.00 a.m. he alongwith one platoon of CRPF went

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with the officer in-charge of Moran P.S. for necessary action at the above villages. After interrogating some persons the officer in-charge of Moran P.S. informed him that the ULFA militants left the above villages and went towards village Oufalia. At village Oufalia they were informed that the militants went towards Rangoli Himpara village. They proceeded towards that village and arriving at the above village this witness got down from the vehicle and started walking towards Rangoli Himpara village. The officer in-charge of Moran P.S. was leading the party. On reaching Rangoli Himpara village this witness took CRPF personnel with him. The officer in-charge of Moran P.S. alongwith his police party consisting of ten armed personnel went towards two different sides. This witness stated that he conducted search of every houses, boys and men (not women) of Rangoli Himpara village. Thereafter both the boys and men were kept in a newly constructed shed by the side of village road of Himpara. At about 3.00 p.m. he allowed the boys and men to go home and his party left the village towards Kawaimari village. While they were proceeding in sumo vehicle he saw another vehicle coming from the opposite direction and he stopped the vehicle. He found the driver and two young boys in the vehicle and separated the boys and interrogated them. The driver told him that they were coming from Sonari to enjoy Bihu. He stated that the driver disclosed his name as Sri Hiteswar Konwar.

On interrogation one boy told him that he was taking the driver and the other boys to the house of Late. Dulen Baruah. He searched Sri Hiteswar Konwar and found some news papers cutting in his

S. H. Konwar

purse. He also found two mobile handset and in one there was no sim card. The sim card was found in the vehicle subsequently. The other mobile phone belonged to Sri Hitewar Konwar. He took the driver and two boys in his vehicle to a distance of 1 1/2 k.m where CRPF personnel were present. The mother of one boy of Himpara village started crying saying that she would commit suicide if the boy was taken by this witness. He allowed the boy to go home. The sim card which he found in the car was put in the mobile hand set and immediately a telephone call came from Sri Rudra Gogoi, an ULFA extremist. This witness did not know Sri Rudra Gogoi or his voice. Sri Hiteswar Konwar informed him that the telephone call was coming from Sri Rudra Gogoi. On his instruction Sri Hitesh Konwar informed Sri Rudra Gogoi that he was released by the police party. Sri Rudra Gogoi instructed Sri Hitesh Konwar to keep the vehicle where it was stopped by this witness and the vehicle was taken back by driver Sri Hitesh Konwar and personal security force of this witness. Thereafter Sri Rudra Gogoi asked Sri Hitesh Konwar to take the vehicle to the house of Late. Dulen Baruah. The vehicle was not allowed by this witness to go to the house of Late. Dulen Baruah and over phone Sri Rudra Gogoi asked Sri Hitesh Konwar as to why it was not done.

According to this witness Sri Rudra Gogoi sent Sri Srimanta Baruah towards the vehicle and asked Sri Hitesh Konwar why the vehicle was not taken to the house of Late. Dulen Baruah. This witness asked Sri Srimanta Baruah to get inside the vehicle. At that time another telephone call came from Smti Bohagi Baruah, cousin of Sri Srimanta Baruah, and she enquired whether there was any other person in the vehicle. At the

S. N. Baruah

direction of this witness Sri Hitesh Konwar replied in negative. Sri Srimanta Baruah on the instruction of this witness informed Smti Bohagi Baruah that the vehicle could not be taken because the condition of the road was bad. At that time Sri Jiban Baruah who resides near the house of Dulen Baruah, came in a bicycle and crossed the vehicle where this witness was sitting and thereafter he returned. He asked Sri Hitesh Konwar to drive the vehicle to the house of Late. Dulen Baruah. This witness asked Sri Jiban Baruah to get inside the vehicle. This witness stated that he and other personnel of his party were in CRPF uniform. ULFA militant Sri Rudra Gogoi asked Sri Hitesh Konwar to come on foot as he could not take the vehicle. According to this witness he asked through VSF other CRPF party to go to the back side of the house of Dulen Baruah on foot. But instead the party came towards the vehicle where this witness was present and took position behind his vehicle. On direction of this witness Sri Hitesh Konwar drove the vehicle towards the house of Late. Dulen Baruah. In the vehicle he was sitting with his four security personnel, driver Sri Hitesh Konwar, Sri Srimanta Baruah and Sri Jiban Baruah. As soon as the vehicle reached near the house of Late. Dulen Baruah and while this witness and other persons, who were sitting in the vehicle, tried to get down, heavy gun firing came from the house of Late. Dulen Baruah. This witness stated that out of four security personnel one person went towards Namgharh by the side of the house of Late. Dulen Baruah. As they crawled towards the house of Dulen Baruah they asked the inmates of the house to come out.

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According to this witness the wife and one son of Late. Dulen Baruah and one brother of Dulen Baruah came out from the house towards the gate giving cover to the militants. He has further stated that taking advantage of the said cover the militants fled away towards tea bushes. The CRPF personnel went to the front of the house. The security personnel of this witness challenged the ULFA militants and asked them to stop. The security personnel also fired in the air. The wife and son of Late. Dulen Baruah were brought towards the vehicle. This witness stated that his party started firing towards the house of Dulen Baruah for about 20/30 minutes with AK 47 rifles and Insass rifles and they fired 82 rounds. He has further stated that firing was coming from the opposite side from tea bushes by the side of house of Dulen Baruah. The militants fired from AK 47 rifles and thereafter from pistol. It was completely dark. After firing stopped the O/C of Moran P.S. and Moranhat police stations reached the house of Late. Dulen Baruah with reinforcement from CRPF party with a doctor. They found a dead body which was subsequently identified as of Dulen Baruah. The dead body was found outside the house of Dulen Baruah. The party searched the house of Late. Dulen Baruah and found ammunitions, empty shells etc. which were seized by this witness. This witness admitted that he had no power to seize. He handed over the seized articles with a seizure list to the officer in-charge of Moranhat P.S. The Superintendent of Police, Dibrugarh and Commandant of CRPF, 149 Bn. arrived. The O/C of Moranhat P.S. took charge of

L. M. Chatterjee

the dead body and also took into the custody of Sri Hitesh Konwar, Sri Srimanta Baruah and Sri Jiban Baruah who were taken to Moranhat P.S. He has denied that CPRF personnel assaulted wife, sons and some nearby villagers of Late. Dulen Baruah. Exbt.-11 is the FIR filed by this witness before the O/C Moranhat P.S. He has stated that Late. Dulen Baruah was not a member of ULFA. He did not find any bloodstain inside or outside the house except the blood near the dead body.

In cross examination by Mr. S. Seal, Advocate he has stated that Late. Dulen Baruah died due to cross firing between ULFA militants and CRPF personnel.

For convenience of the relations of Late. Dulen Baruah and the persons residing in village Himpara the Commission examined six witnesses at Moranhat PWD IB as stated earlier. The witnesses were selected by the Commission, after visiting the house of Late. Dulen Baruah and also talking to the persons who were present at the house of Late. Dulen Baruah. These witnesses are: 1. Smti Lily Baruah (CW-12), W/o. Late. Dulen Baruah 2. Sri Srimanta Baruah (CW-13), S/o. Late. Dulen Baruah 3. Miss. Renu Baruah (CW-14), 4. Sri Gopal Charingia, (CW-15), 5. Sri Umakanta Gogoi (CW-16), and 6. Sri Jiban Baruah (CW-17).

Smti. Lily Baruah (CW-12) has stated in her evidence that on 13/4/08 at about 4.30 p.m. she was asked by her husband, Dulen Baruah to bring their cattle from the paddy field to their house. While she was in the field one uniformed person asked her to return home and while doing

Smti Lily Baruah

so he was aiming the gun towards air. The said person escorted her to her house. On reaching her house she saw her deaf and dumb boy standing in front of her house. Her cousin Sri Umakanta Gogoi (CW-16) was also standing near her house. Both of them were raising their hands. She was also asked to stand and to raise her hands which she did. Thereafter all three of them were taken to the drain by the side of their house near LP School and asked them to lie down in the drain. The person was speaking to her in Assamese and he assaulted three of them with lathi and she prayed not to assault her deaf and dumb boy (Biju). After some time all of them were taken to the LP School which is at a distance of 100 yards. Said uniformed person also took her other son Sri Srimanta (CW-13) and Sri Jiban Baruah (CW-17). Sri Jiban Baruah is the son of elder brother of her husband and he resides near their house. The said uniformed person charged her that she allowed ULFA extremists to escape from her house, which she denied. She was given a slap. Sri Umakanta was also taken to the said place. All five of them were taken to the vehicle. While taking her she was kicked by the said uniformed person. At about 1 a.m. in the night she alongwith her deaf and dumb son and Sri Umakanta were allowed to go home but took away other two persons namely Sri Srimanta Baruah and Sri Jiban Baruah in the vehicle. While she returned home she found all her belongings and cloths etc. were scattered in her house. At her request Sri Umakanta took her along with her deaf and dumb son to his house. According to her while all of them were sitting at LP School they heard firing of guns towards her house which continued for half an hour. She came back to her house next morning and till that

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time she was not given any information about the death of her husband Dulen Baruah. The dead body of her husband was brought to her house in the afternoon. After returning from the house of Sri Umakanta next day she saw bullet marks on the wall of the road side of her house.

Sri Srimanta Baruah (CW-13) is the son of Late. Dulen Baruah. According to him on 13/4/08 CRPF personnel conducted search operation in all houses of their village including their house. They also interrogated the villagers and left the village. In the afternoon when it was dusk, he went out from his house and met his friends in connection with celebration of Bihu. About half a kilometer from the LP School near his house he saw a Tata Sumo vehicle being parked. After some time the vehicle came towards their village. He approached the vehicle, saw the driver and at first he did not see any body inside the vehicle. When he went near the vehicle he saw three or four persons inside the vehicle with guns in their hands. One or two persons were in civil dress and others in CRPF uniform. He was asked to get inside the vehicle and they asked his name and place of residence. They were speaking in Assamese. He requested them to release him and at that time Sri Jiban (CW-17) came near the vehicle and he was also taken inside the vehicle. Thereafter the vehicle drove towards L.P. School and both of them were asked to get down and lie down in the drain near the L.P. School, which they did. After some time his mother (CW-12), Umakanta Gogoi (CW 16) and his deaf and dumb elder brother were brought near the L.P. school asked them to lie down in the drain. When they got down

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from the vehicle, armed persons started firing towards their house and they also could hear the sound of firing of gun when they were lying in the drain. He did not see at which direction guns were firing as they were lying in the drain. In the drain they were assaulted with a bamboo stick and also were kicked. His deaf and dumb elder brother, his mother, (CW-12) and Sri Umakanta Gogoi (CW-16) sustained injuries. Afterwards they were treated in the Assam Medical College Hospital, Dibrugarh. After sometime his mother (CW-12), the deaf and dumb elder brother and Sri Umakanta Gogoi (CW-16) were allowed to go home. He and Sri Jiban Baruah (CW-17) were taken to the LP School and thereafter they were taken to the vehicle. He has stated that Sri Tileswar Lahon was in the vehicle alongwith other armed personnel. Sri Tileswar Lahon also assaulted them. As soon as the firing stopped number of vehicles arrived at the spot. He and Sri Jiban Baruah (CW-17) were taken to Moran P.S. He has stated that he had occasioned to see Sri Tileswar Lahon in public meeting and in earlier Bihu festival. After keeping them at Moran P.S. for about 20 minutes they were taken to CRPF camp at Bamunbari where they were given food in the early morning. Thereafter at about 3 or 4 a.m. they were taken to Moranhat P.S. After the villagers from his village came to the police station they were released. Only at the police station he came to know about the death of his father Late. Dulen Baruah. They were given first-aid at Moran state dispensary where they were taken by the villagers. After three days of the death of his father they were taken to Dibrugarh Medical College Hospital by a Government ambulance. Apart from this witness, his mother Smti Lily Baruah (CW-

12), Sri Jiban Baruah (CW-17) and Sri Umakanta Gogoi (CW-16) were also taken to Dibrugarh Medical College Hospital where they were given treatment. The witness assured that records showing their treatment at the Assam Medical College Hospital would be produced before the Commission, which he did. He has stated that his mother Smti. Lily Baruah (CW-12) got compensation of rupees three lakhs from the state Government for the death of his father and he was given a job in the office of the Deputy Commissioner, Sivasagar.

In cross-examination by Mr. S. Seal, Advocate for Sri Tileswar Lahon he has stated that he had no personal grudge against Sri Tileswar Lahon and that he did not submit any written complaint to the police that he was assaulted by Mr. Lahon. According to him Sri Tileswar Lahon was a fat person but not very much. He did not know the house of Sri Tileswar Lahon. He also could not say on which date he saw Tileswar Lahon. He also did not see Sri Tileswar Lahon visiting their village. He has denied that Sri Tileswar Lahon is a lean and thin person. He did not tell his mother (CW-12) that Sri Tileswar Lahon joined the armed personnel in course of causing assault to them. He denied that the armed personnel did not assault them.

Smti Renu Baruah (CW-14) has stated that on the date of the occurrence at about 1.00 p.m. 10/11 boys of their village were apprehended by CRPF personnel and brought to the field of the LP School near her house. They were also assaulted. She alongwith other ladies came for getting the boys released. The CRPF personnel brought

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out a cassette asked her and other ladies to perform Bihu dance, and, she replied that they were unable to dance with Hindi music. However, four ladies and one male person performed Bihu dance. At that time two persons in civil dress, with guns in their hands came to the place and released the boys. They left in a Tata Sumo vehicle but returned after about half an hour. Thereafter she went back to her house with her two grand daughters. On way the above two persons stopped the vehicle, got down and went running toward the house of Late. Dulen Baruah. Being afraid she went to her house with her two grand daughters. From her house she heard the above two persons shouting in slang language. She also heard Smti Lily Baruah (CW-12) pleading to the above two armed personnel not to assault her deaf and dumb son. At that time she heard sound of firing of guns for about half an hour but did not see anything as she was in side the house. Next day in the morning she alongwith other ladies went to Moranhat P.S. for getting the arrested persons released. Only at the police station she came to know about the death of Late. Dulen Baruah.

Gopal Charingia is CW-15. According to him on the date of occurrence at about 1.00 p.m. the CRPF personnel came to their village and conducted search of the houses of villagers. He alongwith his elder brother and other persons were asked to come out from their houses and they were taken to the field near his house. After some time at about 2.30 p.m., he was allowed to go home. According to him at about 5.30 p.m. during dusk the vehicle was driven to the front of his house and stopped in front of the LP School. Two persons with guns in their hands got

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down from the vehicle and they got separated themselves – one person went towards the back side of the LP School and other person was standing near the vehicle. He heard gun fire coming from the above two persons. They fired towards the house of Late. Dulen Baruah. Out of fear he went inside his house. At about 6.30/7.00 p.m. one CRPF personnel in uniform brought him from his house and asked whether there was any member of ULFA in their village. He replied that as the CRPF personnel conducted search of their houses and did not find any members of ULFA, therefore there could not be any ULFA members in their village. He got slap on his face from the CRPF personnel. At about 8.30/9.00 p.m. the OC of Moranhat P.S., who arrived at the place of occurrence, took him and showed the dead body of Late. Dulen Baruah, which he identified. The dead body was lying by the side of Late. Dulen Baruah's house towards LP School. He was dropped back at his house, but after sometime the CRPF personnel again took him to the house of Late. Dulen Baruah. He was asked to lift the dead body of Late. Dulen Baruah and as he refused he was forced to do so. According to him the Second Officer of the P.S. helped him while lifting the dead body. He saw that upper portion of the head of Late. Dulen Baruah was blown off by gun shot. According to him the firing continued for half an hour.

Sri Umakanta Gogoi was examined as CW-16. He has stated that at about 11.00 a.m. he was informed by his wife that the boys from the villages were kept in a shed in the Tin ali of their village by the CRPF

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All ladies of their village including his wife went to the place where the boys were kept but he did not go. Later the boys were released and CRPF also left the village. In the afternoon during dusk when he went towards the house of Late. Dulen Baruah he saw a vehicle coming from Tinali towards the LP School of their village, where the vehicle stopped. From the vehicles two persons (one in uniform) with guns in their hands rushed out from the vehicle and started firing towards the house of Late. Dulen Baruah. Two other persons also got down from the vehicle and went to the other side of the vehicle. They were talking in Assamese and asked the villagers to come out from their houses raising their hands. He along with Smti Lily Baruah (CW-12) and her son came out raising hands. The armed persons caught hold of him, Smti Lily Baruah and her deaf and dumb son and took them towards the drain near the School. He saw another three persons were lying in the drain. They were assaulted with bamboo stick by the armed personnel. He sustained injuries and so also others. He was treated initially in the Government Hospital at Moran and after three days of the death of Late. Dulen Baruah he was taken in a Government Ambulance to the Assam Medical College Hospital, Dibrugarh for treatment. Thereafter they were all taken to the verandah of the L.P. School. They were assaulted while taking them to the above School of the village. They were taken to the vehicle and Jiban Baruah (CW-17) and Sri Srimanta Baruah (CW-13) were taken out from the vehicle and were interrogated. He along with Smti Lily Baruah and her deaf and dumb son were allowed to go home. But Sri Jiban Baruah and Sri Srimanta Baruah were kept in the vehicle. He alongwith Smti Lily Baruah and her deaf and

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dumb son went to the house of Late. Dulen Baruah and found that all the articles inside the house were scattered. At the request of Smti Lily Baruah she and her deaf and dumb son were taken by him to his house and it was about 1 or 2 a.m. In the evening he heard sound of firing from gun for about 15/20 minutes.

Sri Jiban Baruah was examined as CW-17. On the date of occurrence at about 4.30/5.00 p.m. while he was returning home he found a vehicle parked at Tinali of their village. He was called near the vehicle and thereafter he was put inside the vehicle by force. In the said vehicle he found three armed personnel and except one person all others were in civil dress. He found Sri Srimanta Baruah (CW-13) inside the vehicle. He was taken alongwith Sri Srimanta Baruah in the vehicle which stopped in front of the I.P School. Thereafter he was taken alongwith Srimanta Baruah to the drain near the I.P School and was put inside the drain. The armed person started firing towards the house of Late. Dulen Baruah which continued for half an hour. From the drain, they were taken one by one to the field and were assaulted using Assamese slang language. After keeping them for three hours Umakanta Gogoi, Smti Lily Baruah and her deaf and dumb son were allowed to go to their houses. But he was taken alongwith Sri Srimanta Baruah to Moran P.S. where they were kept for half an hour. Thereafter they were taken to the CRPF camp at Bamunbari. At about 4.00 a.m. they were taken to Moranhat P.S. In the morning the ladies from their village came to Moranhat P.S. and thereafter they were released. He came to know about the death of Dulen Baruah while he was at Moranhat P.S. After 3 days from the death of

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Late. Dulen Baruah he alongwith others were taken to the Assam Medical College Hospital, Dibrugarh.

Sri Subhash Yadav has been examined as CW-24. He has stated that on 13/4/08 he was the officer-in-charge of Moran P.S., Dibrugarh District. At about 10.30 a.m. he got confidential information that some members of ULFA namely Baba Dadhara, Rudra Gogoi and five other persons were moving in Thengal area within his jurisdiction. He informed CRPF Camp at Bamunbari by his mobile phone for conducting operation against the above militants. He alongwith twenty other armed police personnel went in a vehicle towards the above CRPF camp. Thereafter he alongwith Asstt. Commandant of CRPF Sri Achala Ram (CW-11) and other CRPF personnel put NAKA in the entire Thengal area and started searching the village. He got information in his mobile phone that members of the above extremist of ULFA moved towards Oupholia village and thereafter they proceeded towards the said village with Sri Achala Ram and other CRPF and police personnel and started putting NAKA and started conducting search. Again he got confidential information over mobile phone that the above extremists moved towards Rangoli Himpara village in Sivasagar District. As Rangoli Himpara village falls under Sivasagar District he informed the Superintendent of Police Dibrugarh, who asked him to proceed to the above area. The Superintendent of Police, Dibrugarh also informed him that he would inform Sivasagar Police. Then the party divided into three groups, one under Asstt. Commandant, CRPF personnel, S.I. Subhash Yadav took some police personnel with him and the third party consisting of Assam

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Armed Police Personnel under S.I. Lal Tanti. While he and his party were conducting search operation he heard sound of firing of guns which continued for half an hour. The place from where he heard the sound of firing was about two k.m. He asked his police party to conduct ambush in the village road. He went to the place from where he heard sound of gun firing and met the CRPF party. One constable of CRPF informed him that there was an encounter with the extremist belonging to ULFA and there was firing from both sides. He went to the house of Late. Dulen Baruah and at that place he met Addl. Superintendent of Police Sivasagar and O/C Moranhat P.S. He was asked by the Superintendent of Police, Dibrugarh, who was also present, to conduct search in the entire village. He returned to the police station at about 1.30 a.m. He has stated that the distance between Moran P.S. and Moranhat P.S. is about 1 k.m. but he did not inform the O/C of Moranhat P.S. though he knew mobile telephone number of the said O/C. He has stated that nobody told him whether Late. Dulen Baruah died due to firing by CRPF or militant.

In cross examination by Mr. S. Seal, Advocate for Sri Tileaswar Lahon he has stated that the house of Sri Tileaswar Lahon is adjacent to the Moran P.S. He has further stated that few days prior to the date of occurrence grenades were hurled at the house of Tileaswar Lahon. In that case Moranhat P.S. Case No. 104/07 was registered. The said occurrence took place on 20/12/07. After a certified copy of an order of the Court was shown by Sri S. Seal, Advocate this witness stated that Mr. Tileaswar Lahon was hospitalized at Dibrugarh due to above occurrence.

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According to him Sri Tuleswar Lahon is short in height and lean and thin person.

Six Doctors were examined namely Dr. Mituban Gogoi (CW-18), Dr. Rajesh Das (CW-19), Dr. Rajesh Kr. Dhanowar (CW-20), Dr. Bipul Borthakur, (CW-21), Dr. Soburuddin Ahmed (CW-22) and Dr. Sultana Shamim Yashine (CW-23).

Dr. Mituban Gogoi (CW-18) examined Smti Lily Baruah (CW-12) on 15/4/08. She was hospitalized and discharged on 17/4/08. He found multiple bruises about 4 c.m. and 5 in number in the right scapular region and right shoulder. There was tenderness over the left mandible. The above injuries according to Dr. Gogoi were due to assault by blunt weapon and the injuries were caused within 24 hours. He also examined Sri Jiban Baruah (CW-17) on 15/4/08, at about 7.00 p.m. and found tenderness over the left scapular area and three bruises over the left shoulder of about 2 to 3 cm. in dimension. The injuries were fresh and occurred within 24 hours and it was caused by blunt weapon. He was kept in hospital for two days and discharged on 17/4/08. He also examined Sri Umakanta Gogoi (CW-16) on the same day i.e. on 15/4/08. He found multiple abrasion and tenderness over the left scapular region and left shoulder and tenderness over the left thigh and legs. According to him the injuries were caused by blunt weapon within 24 hours. All the above injuries of the above persons were in simple nature. In cross examination by Mr. S Seal he has stated that the above injures could have been caused due to fall on hard substance and thereafter rolling.

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Dr. Raju Das (CW-19) examined Sri Srimanta Baruah on 15/4/08 in the evening. Sri Srimanta Baruah (CW-13) was a case of Hemophilia. The Dr. Das found bruise on the left knee of Sri Srimanta Baruah. In Cross examination he has stated that the injuries could have been caused due to fall.

Dr. Rajesh Kr. Dhanowar (CW-20) also examined Sri Srimanta Baruah on 15/4/08 who has stated that Srimanta was admitted in the hospital and discharged on 17/4/08. He was a case of Hemophilia.

Dr. Bipul Borthakur (CW-21), Dr. Soburoddin Ahmed (CW-22) and Dr. Miss Sultana Shamim Yashine (CW-23) also examined the above person namely Sri Srimanta Baruah on different dates in the hospitals. It is not necessary to refer to the evidence of these witnesses in view of evidence of Dr. Rajesh Das (CW-19).

Immediately after the death of Late. Dulen Baruah the District Magistrate Sivasagar by order Dtd. 14/4/08 directed a Magisterial Enquiry which was conducted by Sri H.C. Dutta, A.C.S., the then Addl. District Magistrate, Sivasagar. The enquiry report is available with the Commission (Exbt-10).

The District Magistrate, Sivasagar directed by the above order Sri Dutta to ascertain 1. The circumstances leading to the death of Late. Dulen Baruah and man handling of family members of the deceased and 2. The circumstances under which Dibrugarh police alongwith CPRI conducted operation in Sivasagar without involving the Sivasagar district police. Sri Dutta visited the house of Late. Dulen Baruah, met the neighbours and relations of Late. Dulen Baruah. He also recorded the

Sri Dutta

statements of Smti Lily Baruah (CW-12), Sri Srimanta Baruah (CW-13) and Sri Umakanta Gogoi (CW-16). He also received report from Mr. Anurag Agarwal, the Superintendent of Police, Dibrugarh and Mr. Shymal Prasad Saikia Superintendent of Police, Sivasagar and further received the written statements of following person namely-

(1) Sri Jiban Baruah (CW-17) (2) Sri Gopal Charingia (CW-15) (3) Smti Renu Baruah (CW-14) (4) Sri Dilip Baruah (5) Smti Rima Baruah and (6) Smti Rina Baruah.

After analyzing the evidence on record and various documents received etc, Sri Dutta was of the opinion that – “As per oral deposition of various members of the assembly including the members of the victims family, at the time of encounter as claimed by CRPF actually on 13/4/2008 in the evening there was no ULFA extremists in the house of Late. Dulen Baruah at the time of firing by CRPF personnel. Late. Dulen Baruah perhaps was ready to go to Namghar (village Mandir) to light Pradip. The villagers observed that in the day time search operation by CPRF personnel in the village they found no such ULFA extremists in the village”.

According to Sri Dutta Late. Dulen Baruah was a poor cultivator and regularly served as Namgharia (Puzari) of the village and death was caused due to bullet injuries which hit in the occipital area (back side) of the skull as confirmed by postmortem report and the death could not be seen or considered as a planned one, but incidental. Sri Dutta has come to conclusion that it was extremely difficult to find out a definite clue to become convinced that a particular person was responsible for the

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death of Late. Dulen Baruah. He has further concluded that the encounter involved firing from east side and west side of the house of Dulen Baruah which was in the middle portion of the compound. According to him the death occurred on 13th April' 08 between 5.30/6.00 p.m. during encounter between ULFA militant and Government force. It is not necessary to go into other details of his analysis of evidence and findings.

The Government of Assam constituted one man enquiry committee to be headed by Mr. Alok Parti, I.A.S., Addl. Chief Secretary, Government of Assam vide Notification dtd. 17th April' 09 to enquire into this circumstances leading to the death of Late. Dulen Baruah of village Himpara, P.S. Moranhat, District Sivasagar on 13/4/08. The terms of the said enquiry is stated below: - (1) The circumstances leading to the death of Late. Dulen Baruah S/o. Dimba Baruah of Himpara area under Moran P.S. Dist. Sivasagar.

(2) To ascertain the cause of death of Late. Dulen Baruah and fixed responsibility thereof.

(3) To ascertain the truth regarding allegation of harassment of the local people of Himpara area on 13/4/08.

(4) To find out the lapses, if any, on the part of any authority if involved.

(5) Measures to be taken to prevent the recurrence of such incident in future and

(6) Any other matter which in the opinion of the enquiry authority will require to looked into.

Mr. Parti visited the place of occurrence on 20/4/08 alongwith District and Police officials of both Dibrugarh and Sivasagar

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districts. At the place of occurrence he recorded the statements of Smti Lily Baruah (CW-12), wife of the deceased and his son Sri Srimanta Baruah (CW-13). The enquiry committee also received representations from three organisation of the area. The Committee obtained photo copies of the general diary of Moranhat P.S. Dist. Sivasagar and Moran P.S. Dist. Dibrugarh for 3 days namely 13th 14th and 15th April' 08. The Committee also received reports from the following officials:

- (1) The Deputy Commissioner, Sivasagar.
- (2) The Superintendent of Police, Dibrugarh.
- (3) The Addl. Superintendent of Police, (HQ) Sivasagar.
- (4) The Sub-Divisional Police Officer, Sonari.
- (5) The Officer-in-charge, Moranhat P.S.
- (6) Sub-Inspector, Subhash Yadav of Moran P.S. Dist. Dibrugarh and.
- (7) Mr. Achala Ram, Asst. Commandant, G - 149 Bn. CRPF.

After considering all the relevant records the Committee came to the following conclusion, inter-alia -

(1) Late. Dulen Baruah was the victim of cross firing between CRPF and ULFA cadres who were stationed and hiding in the house of Late. Dulen Baruah and that there was no evidence to indicate that CRPF went to the place of occurrence only to kill Dulen Baruah.

(2) There was also no evidence to indicate the presence of Sri Tileswar Lahon as alleged by Sri Srimanta Baruah (CW-13).

(3) The death of Late. Dulen Baruah occurred due to bullet injury and it was not clear as to whose gun shot actually killed the person

S. M. P. Lahon

as both CRPF and ULFA were using AK - 47's. Therefore fixing of responsibility on any of the persons of police force did not arise. Since the first gunshot was fired from inside Late. Dulen Baruah's house presumably by ULFA cadre, the initiation of armed conflict squarely rests with the out lawed ULFA and therefore they are indirectly responsible for the death of Late. Dulen Baruah.

(4) It was held that during search operation carried out in the villages including Himapara Rangoli area there was generally a sense of fear among the local population. The Enquiry Committee noted that no report was lodged in the police station of physical assault, injury or threat from any house which was searched and therefore it would be unfair to conclude that undue harassment had been caused to the local population. The Enquiry Committee also found that the search operation was fully justified.

(5) According to Enquiry Committee the entire episode indicates that the police administration of Dibrugarh District was very alert and active and search operation carried out as it was unavoidable after having received reliable source information. Regarding action of CRPF the Enquiry Committee concluded that the CRPF carried out the operation under the direction of O/C Moran P.S. and action taken was justified. Regarding police administration of Sivasagar District, the Committee was of the opinion that the approach of the said administration was very unprofessional. The Enquiry Committee also noted that it was not correct that Dibrugarh police did not inform Sivasagar police while conducting the search and it

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was noted that the very fact that people of Himpara area shouted slogans in his presence saying "Sivasagar police prasahan zindabad" and "Dibrugarh police prasahan murdabad" clearly indicated that police administration of Sivasagar was playing to the gallery and attempted to seek public support conveying their condemnation of Dibrugarh police administration which was unprofessional and objectionable. According to the Enquiry Committee the Home and Political Department of Govt. of Assam must devise strategies and plans to strengthen intelligence gathering mechanism and also to build confidence amongst the villagers of ULFA dominated area to resist entry of ULFA cadres and if necessary also build confidence amongst the villagers of ULFA dominated area with the Govt./Police support.

(6) According to the Committee the police force do not appear to be highly professionally trained and well-equipped with modern weapons. Therefore police force should be equipped better than the terrorists and must be also thoroughly trained.

(7) According to Enquiry Committee in this case ULFA clearly knew that the Sivasagar Police Administration compared to Dibrugarh District Police Administration was weak and unprofessional and therefore took full advantage of this fact.

(8) The Enquiry Committee suggested that the CRPF being a Para Military Force should work only under direct guideline of local police who is familiar with the geography of the area. The Committee noted that in this case the escape of ULFA terrorists could have been prevented if the

house of Late. Dulen Baruah would have been cordoned off effectively and this could have been possible if only local police had accompanied the CRPF for all operation and guided them at all stages.

The Commission has extracted the relevant portions of the statements filed, evidence recorded, other available records and also findings of two enquires, one conducted by the Addl. District Magistrate and other by the Addl. Chief Secretary. Now the Commission would like to discuss the materials on record and come to its own conclusion.

Discussion of evidence and other materials are extracted above and findings of the Commission.

According to the terms of reference vide Notification Dtd. 7th June 2008, the Commission has to ascertain circumstances leading to the killing of Dulen Baruah, S/o. Late. Dimba Baruah, village Himpara, under Moran P.S. of Sivasagar district on 13/4/2008. There is no dispute that Dulen Baruah died due to injuries caused by gun fire. According to police and the CRPF personnel there was cross-firing between security personnel and ULFA militants from the house of Dulen Baruah and as a result he died in the course of such cross-firing.

It is not disputed in fact it is admitted by all including Achala Ram (CW -11), the then Assistant Commandant, CRPF posted at CRPF Camp at Bamunbari P.S. Moran district Dibrugarh that Dulen Baruah was an innocent villager and was not a member of the militant ULFA group. Late. Dulen Baruah was Namgharia i.e. he used to light Pradip in Namghar.

S. N. P. L. S.

It will be relevant at this stage to extract the relevant portion of the postmortem report of Dulen Baruah; "Wounds of entry of about 1" x 3", wounds are inverted (intrusive) with absence of occipital area (back side of the skull) and portion of brain matter was absent. The wounds of exit are irregular and averted (evasive) of about 1", 1/2" into 3". The wounds of entry on the left occipital area and probe (Small stick) can be passed through the canal and wounds of exits from the left frontal area. Oozing of blood from mouth, nostril and ear and portion of left parietal area, (part of the face in front of the ear) and left occipital area and upper portion of brain matter absent. Ecchymosed (Blackening of skin) seen over the left shoulder area and black, clotted blood seen on the exit wounds with surrounding soft tissue lacerated (Splitting muscles)". The doctor found that a portion of left occipital area, left parietal area and position of brain matter absent.

The very fact that there was blackening of skin and the portion of left occipital area, left parietal area and position of brain matter absent would lead the Commission to hold that according to medical jurisprudence, the gun was fired by the person from a short distance possibly not beyond 1 1/2 feet.

While ascertaining the circumstances leading to death of Dulen Baruah the Commission has to find whether the version of the police and CRPF personnel that, he died due to cross-firing is correct or not

CW-1 Mr. N.M. Hussain, I.A.S., Deputy Commissioner, Sivasagar has stated in his evidence that about 7.30 P.M. on 13/4/2008

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Mr. Manabendra Deb Rai, Addl. Superintendent of Police informed him over phone that Dibrugarh police with CRPF party conducted operation to nab ULFA extremists at Himpara village of Sivasagar and one Dulen Baruah was killed due to firing. He has admitted that he had no personal knowledge about the incident. Therefore, his evidence need not be considered while answering the above question. Mr. Shayaml Prashad Saikia, the then Superintendent of Police, Sivasagar who was examined as CW - 2 had also no personal knowledge as on 13/4/08 he was on leave and out of station giving charge to Mr. Manabendra Deb Rai, Addl. Superintendent of Police, Head Quarter. Only in cross-examination by Mr. Seal, Advocate he has stated that from the FIR filed by Mr. Achala Ram, Asstt. Commandant, CRPF, he came to know that Dulen Baruah died due to cross-firing. Mr. Anurag Agarwal, I.P.S., (CW-3) the then Superintendent of Police, Dibrugarh had also no personal knowledge about the actual cause of death of Dulen Baruah as he was not present at the place of occurrence. In his cross-examination he has specifically stated that he went to the place of occurrence after getting information that an encounter took place between security forces and ULFA extremists at Rangoli Himpara village in which Dulen Baruah died.

Mr. Ashotosh Agnihutri (CW-4) has clearly stated that he was on leave from 12/4/2008 to 18/4/2008 and on his return to H.Q. Dibrugarh he came to know about the incident. The evidence of two more witnesses are necessary to consider namely S.I. Debajit Das (CW - 7) who was the O/C of Moranhat P.S., Sivasagar. From his evidence we find that on getting information at about 1.45 P.M. over phone from Mr.

S. N. Phukan

Manabendra Deb Rai, Addl. Superintendent of Police, H.Q. about the operation of the security personnel with in his jurisdiction he put NAKA at the four exit point of the village to prevent escape of extremists. He also went towards the place of occurrence and about 6.30 p.m. while he was at Bishrampur village he heard sound of firing gun coming from Himpara area and he immediately informed Mr. Manabendra Deb Rai Addl. Superintendent of Police H.Q, Sivasagar. S.I. Mr. Subhas Yadav (CW-24) was the O/C Moran P.S., Dibrugarh district on the date of occurrence i.e. 13/4/2008. From his evidence the Commission finds that he alongwith Asstt. Commandant, CRPF (CW-11) went for apprehending ULFA militants and put NAKA, in the entire Thengal area and started searching the villages. Thereafter the entire party went towards Oufalia village and after putting NAKA started conducting search when they got information that member of the extremists ULFA groups moved towards Rangoli Himpara village within Sivasagar district. Therefore he informed Superintendent of Police, Dibrugarh. He has also stated that at Himpara village the CRPF and police party divided in three groups namely one under Asstt. Commandant, Achala Ram and other CRPF personnel. This witness (CW-24) took some other Assam Police personnel with him and third party under S.I. Lal Tanti with other armed Assam Police personnel and armed police went in different direction. Thereafter these two witnesses (CW-7 and CW-24) were not present at the place of occurrence.

Mr. Achala Ram (CW-11) has also stated that on reaching Rangoli Himpara village he took CRPF personnel with him and the O/C of Moran P.S. along with his police party went towards different

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directions. Situated thus the Commission finds that except Achala Ram (CW - 11) above other witnesses did not see the actual occurrence. The Commission has to scrutinize the evidence of this witnesses thoroughly to ascertain whether there was any cross-firing between CRPF personnel and ULFA militants in the house of Dulen Baruah. S.I. Yadav, CW-24 has stated that CRPF and armed police conducted search in the village Thengal area and also put NAKA and similarly search and NAKA was done in the village Owfalia. As stated above that three groups of security forces went in different direction and from the evidence of S.I. Yadav (CW-24) the Commission finds that his party also conducted search operation in the houses of the village by his police party and at the time of conducting search operation he heard sound of firing of gun which continued for half an hour. From the evidence of Mr. Achala Ram (CW-11), the Commission finds that he along with his CRPF personnel went towards Rangoli Himpara village and on reaching the said village he conducted search of every houses of the village including boys and men (not women) of Rangoli Himpara village. Thereafter he took boys and men of the village and kept them in a newly constructed shed by the side of village road of Himpara. At 3 p.m he allowed the boys and men to go home and his party left towards Kawaimari village in a Sumo vehicle. On way he saw another sumo vehicle coming from the opposite direction and stopped the vehicle. He found the driver and two young boys in the vehicle and separated the boys and interrogated them. The driver told him that they were coming from Sonari to enjoy bihu. He has stated that the driver of the vehicle disclosed his name as Sri Hiteswar Konwar.

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Mr. Achala Ram (CW-11) filed FIR at Moranhat P.S. after the occurrence and the said FIR is available in the copies of the case diary of P.S. Case No. 62/08. Exbt. 11 is the said copy of the FIR and Exbt. 11 (1) is the signature of Sri Achala Ram. In the FIR he has inter-alia stated that about 6 P.M. on seeing the police and CRPF party the ULFA militants started indiscriminate firing on the CRPF and the police team and the CRPF also retaliated in self defence. He has further stated that taking advantage of darkness and dense tea bushes hardcore militants managed to escape and the police and CRPF party chased the militants till they disappeared. After the firing stopped CRPF and police party searched the house and apprehended one suspected ULFA militants namely Sri Hiteswar Konwar and 2 others. During frisking of above individual at the spot the following items were received,

- 1) 3 Mobile handsets.
- 2) 1 purse with cash of Rs. 3690/-

During search of the surrounding area of the house he recovered 1 grenade 10 empty cases of AK-47, 3 empty cases of unknown bore weapon, 8 live ammunitions of AK-47, five numbers of explosive, one demand note with letter pad, one ULFA flag and one TATA Sumo vehicle NL-04-C-8086 being used by the hardcore ULFA.

From his evidence we find that he alongwith CRPF personnel went to the house of Dulen Baruah and the police party did not accompany them. In fact, from the evidence of SI Mr. Subhash Yadav (CW - 24) we find that at Himpara village, the CRPF and Police party divided into three groups and one group under Mr. Achala Ram (CW-11),

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Asstt. Commandant, CRPF went towards the village Himpara and the said party was not accompanied by Assam Police Personnel. Mr. Achala Ram CW-11 has further stated in his FIR that after the firing stopped the CRPF and police party searched the house of Dulen Baruah and apprehended one suspected militant namely Sri Hiteswar Konwar and two others. But in the evidence of Mr. Achala Ram (CW - 11) has stated that Sri Hiteswar Konwar who was driving the Tata Sumo vehicle alongwith two young boys and he stopped the vehicle, interrogated Hiteswar Konwar and other two boys and he took them into his custody.

Thus from the above it appears that Mr. Achala Ram CW-11 made complete somersault, and tried to give a different story in his evidence. Possibly he did it to improve his version of the story of the CRPF in its role for causing death of Dulen Baruah. In the FIR it has been stated that during search of the surrounding area of the house of Late Dulen Baruah Mr. Achala Ram recovered one grenade, ten empty cases of A.K.-47, three empty cases of unknown bore weapon eight live ammunition of AK-47, five nos of explosives, one demand note with letter pad one ULFA flag and one Tata Sumo vehicle which were used by hard core ULFA. According to FIR the above search was made by CRPF and police party jointly. From the evidence of this witnesses, the Commission finds that this witness alone seized the articles from the house of Late Dulen Baruah and not from the surrounding area. This witness seized the above articles though he has admitted that he had no power of seizure. Thus his statement that these articles were recovered from the house of Late Dulen Baruah cannot be accepted. That apart,

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from his evidence we find that immediately the O/C of Moran P.S. and Moranhat P.S. arrived at the place of occurrence therefore, the Commission could not understand the hurry of seizure of these articles by this witness namely (CW -11).

According to Achala Ram CW-11 as soon as the vehicle which was driven by Hiteswar Konwar where this witness and other persons were sitting reached near the house of Dulen Baruah heavy gun fire came from the house of Late Dulen Baruah. From the evidence of Gopal Charingia (CW-15) we find that from the vehicle where Achala Ram (CW -11) and other persons were going towards the house of Late Dulen Baruah two persons with guns in their hands got down from the vehicle and they separated themselves one went towards the back side of the L.P. School and other persons were standing near the vehicle and thereafter he heard gun fire coming from the above two persons. From the evidence of Achala Ram (CW-11) we found that out of four of his security personnel, one person went towards Namghar by the side of Late Dulen Baruah's house and further he has stated that CRPF party started firing towards the house of Dulen Baruah for about 20/30 minutes. They fired 82 rounds.

From the sketch map (copy enclosed with report) prepared by Mr. H.C. Dutta CW- 10 who conducted Judicial enquiry immediately after the firing as per orders of the Deputy Commissioner, Mr. N.M. Hussain, I.A.S. the Commission finds that the CRPF fired from Namghar near the LP School and from the front of house of Dulen Baruah.

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The Commission may state here that according to Achala Ram CW-11 militants started firing from inside the house therefore the question is whether there was any militant inside the house of Late Dulen Baruah. There is no dispute that CRPF not only conducted search of each and every house of Rangoli Himpara village but also conducted search on boys and men. Moreover men and boys were kept confined in a particular place near LP School. According to Lily Baruah (CW-12) the uniformed personnel charged her that she allowed the ULFA extremists to escape from her house which she denied. Gopal Charingia (CW-15), has stated in his evidence that at about 6.30/7.00 p.m. one CRPF personnel in uniform brought him from his house and asked whether there was any ULFA in their village and he replied that as the CRPF conducted search of their house and did not find any members of ULFA, therefore, no ULFA members could be present in their village. From the evidence of Smti Renu Baruah (CW-14) the Commission finds that CRPF personnel left in a TATA vehicle but returned after half an hour, after conducting search of each and every house and men and boys. Hence in the opinion of the Commission there was no ULFA militants in the house of Late Dulen Baruah or in the surrounding area.

As stated above Sri Dutta Addl. Deputy Commissioner, Sivasagar CW -10 conducted an enquiry and his report is available in the Commission. Sri Dutta was of the opinion that "As per oral deposition of various members of the assembly including the members of the victims family, at the time of encounter as claimed by CRPF actually on 13/4/2008 in the evening there was no ULFA extremists

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in the house of Late. Dulen Baruah at time of firing by CRPF personnel. Late. Dulen Baruah perhaps was ready to go to Namghar (village Mandir) to light Pradip. The villagers observed that in the day time search operation by CRPF personnel in the village they found no such ULFA extremists in the village".

As stated above the firing continued towards the house of Dulen Baruah for about 20/30 minutes and 82 rounds were fired. Mr. Achala Ram (CW-11) has stated in the evidence that he did not find any bloodstain inside or outside the house of Dulen Baruah except the blood near the dead body. This ~~fact~~ will strengthen the fact that there was no ULFA militants inside the house of Dulen Baruah.

From the above discussion the Commission rejects the version of the CRPF and police personnel that there was cross-firing between ULFA militants and security personnel in the house of Late Dulen Baruah as no members of the militants ULFA was present in the house of Dulen Baruah or in the surrounding area. The Commission hold that Dulen Baruah died due to firing by CRPF personnel only.

Now the most important question to decide is whether CRPF personnel fired the gun intentionally to kill Dulen Baruah.

CRPF personnel went into operation at the request of the O/C Moran P.S. to apprehend ULFA militants. This was done on the specific information that some members of the ULFA militants namely Sri Baba Dadhara, Sri Rudra Gogoi and five other members of the ULFA were moving at Thengal area and thereafter they went towards Oufalia. In

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the above village police and CRPF personnel put NAKA on the entry points and searched the villages. At village Oufalia they got information that ULFA militants went towards Rangoli Himpara village where the party divided into three groups namely one group of CRPF led by Mr. Achala Ram and two groups of Assam Police personnel and they went in different directions. The CRPF group went towards Rangoli Himpara village. The above facts would clearly show that CRPF and police personnel went in search of ULFA militants.

Now let us consider the situation at Rangoli Himpara village. The small house of Dulen Baruah isolatedly located and behind the house there were tea bushes. On the other hand CRPF personnel were positioned in open ground and they had no cover. As they were going in search of militants naturally they were quite apprehensive of getting fired upon by the militants. Further, the CRPF apprehended one ULFA militants namely Sri Hiteswar Konwar. The Commission can take judicial notice of the facts that the ULFA militants are equipped with sophisticated arms including grenades and A.K. 47 rifles. When the militants started firing according to CRPF, they also fired upon them in self defence. Without going into the veracity of the statement that ULFA militants fired from the AK 47 rifle, in the opinion of the Commission out of self defence or to prevent militants firing at them definitely the CRPF personnel were right in firing towards the house of Dulen Baruah. Mr. Achala Ram (CW-11) has specifically stated that Dulen Baruah was an innocent villager and he was not anyway involved with ULFA militants. It was not disputed that at the time of firing there was darkness. Therefore,

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the in the opinion of the Commission Dulen Baruah died due to accidental firing by CRPF personnel and it was not intentional killing by CRPF personnel.

From the evidence of Mr. Achala Ram CW-11 we find that when they returned back from Himpara village in a Sumo vehicle towards Moran he saw another vehicle coming from the opposite direction and stopped the vehicle. Sri Hiteswar Konwar was the driver of the vehicle. He found 2 mobile hand sets only one with a sim card. The above mobile sets were in possession of Sri Hiteswar Konwar. According to this witness telephone call came in the above hand set from Sri Rudra Gogoi, an ULFA extremist. He has also stated that Sri Rudra Gogoi instructed Sri Hiteswar Konwar to bring the vehicle which was stopped by Mr. Achala Ram, to the house of Dulen Baruah. It is not necessary to further discuss the evidence of this witness (CW -11) but from the above statement it would show that Mr. Achala Ram (CW-11) was quite apprehensive of presence of ULFA extremist Rudra Gogoi and others. Therefore firing by CRPF towards the house of Dulen Baruah could not be said to be unjustified.

In the conclusion the Commission holds that Dulen Baruah died due to firing by CRPF personnel but his death was accidental and the CRPF personnel did not fire at him with the intension of killing. Accordingly the terms of reference No. 1 is answered.

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Next question to be answered according to the reference is whether any person (s), organisation (s) are responsible for the incident.

From the earlier discussion the Commission has come to finding that Dulen Baruah died due to firing by CRPF personnel and not due to cross-firing as claimed by police and CRPF personnel. The Commission has also come to the finding that death of Dulen Baruah was due to firing by CRPF personnel which was accidental and not intentional. Therefore, though CRPF was involved in the above incident of death of Late Dulen Baruah on 13/4/2008 at village Himpara P.S. Moran but the Commission do not find them responsible.

According to Achala Ram (CW-11) he asked some of his CRPF personnel to go behind the house of Late. Dulen Baruah. But his order was not obeyed and all the CRPF personnel were in front of the house of Late. Dulen Baruah. Had some CRPF personnel gone behind the house, the escape of ULFA militants could have been avoided.

Sri Srimanta Baruah (CW-13), S/o. Late Dulen Baruah has stated in his evidence that Sri Tileswar Lahon, a surrendered ULFA was in the vehicle alongwith other armed personnel (when the vehicle of the CRPF was in the area of operation). He has further stated that Sri Tileswar Lahon also assaulted them.

Sri Srimanta Baruah (CW -13) has also filed FIR which is in record of Moranhat P.S. case No. 63/08. In the FIR he has stated that police party alongwith surrendered ULFA cause death of his father by using gun while his father was coming out of Namghar after lighting the

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lamp. He has categorically stated that Tileswar Lahon, a surrendered ULFA was present.

The occurrence took place on 13/4/08 but the FIR was filed on 16/4/08 i.e. after four days. This creates a doubt about the statement made in the FIR by this witness Sri Srimanta Baruah (CW-13). This witness was cross-examined by learned Advocate Mr. S. Seal for Sri Tileswar Lahon. This witness has stated that he did not tell even his mother Smti Lily Baruah (CW-12) about the presence of Sri Tileswar Lahon alongwith CRPF personnel. Mr. S. Seal has brought out in cross-examination of this witness (CW-13) that he did not know where Sri Tileswar Lahon resides and also did not see him visiting his village. According to this witness (CW-13), Tileswar Lahon was a fat person and he denied the suggestion put forward by Mr. Seal that Sri Tileswar Lahon is a lean and thin person.

From the evidence of Sri Subhas Yadav (CW-24), who was the O/C Moran P.S. Dibrugarh on the relevant date the Commission finds from his cross-examination by learned Advocate Mr. S. Seal, that the house of Sri Tileswar Lahon is adjacent to Moran P.S. This witness (CW - 24) has stated in cross-examination that Mr. Tileswar Lahon was short in height and lean and thin person. This witness has also stated in cross-examination after perusing the certified copy of an order shown by Mr. S. Seal that Sri Tileswar Lahon was hospitalized in the occurrence in which grenades were hurled at his house and P.S. Case No. 104/07 was registered against the incident at Moranhat P.S.

S. Seal

From the above evidence the Commission can not accept the statement of Sri Srimanta Baruah (CW-13) that Tileswar Lahon was in the vehicle of the CRPF and further that some surrendered ULFA cause death of Dulen Baruah on the following grounds namely : - (1) The FIR was filed after four days of the occurrence, (2) He did not disclose involvement of Sri Tileswar Lahon even to his mother and (3) Tileswar Lahon was short in height and lean and thin person, but according to this witness Sri Tileswar Lahon was a fat person. That apart, the identification of Sri Tileswar Lahon by this witness also can not be accepted in as much as Sri Tileswar Lahon never visited the village Himpara and this witness only saw him casually in some public function. Therefore, the Commission rules out the involvement of Tileswar Lahon in the present incident.

(3) The Commission has to ascertain the truth regarding allegation of harassment of the local people in Himpara area on 13/4/08. From the evidence it is clear that in Himpara area only CRPF party was conducting search, interrogation and subsequently firing and Assam Police was not involved. Therefore, the Commission has to ascertain whether there was any harassment by CRPF personnel on local people of Himpara village. Mr. Nawab Mahmood Hussain, I.A.S., Deputy Commissioner, Sivasagar (CW-1) in his evidence before this Commission has categorically stated that Smti Lily Baruah (CW-24) and her son Sri Srimanta Baruah (CW-13) were in state of shock due to alleged beating repeatedly by security personnel. He also found injuries on the person of

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Smti Lily Baruah. He assured them that they would be sent for treatment to Dibrugarh Medical College by a Government vehicle and a sum of Rs. 10,000/- was paid to Smti Lily Baruah (CW-12) on his direction to perform last religious rites of deceased Dulen Baruah. The Deputy Commissioner of the district is a very responsible officer and his statement has to be taken seriously.

In their evidence of Smti Lily Baruah (CW-12), her son Sri Srimanta Baruah (CW-13), Sri Umakanta Gogoi (CW-16) and Sri Jiban Baruah (CW-17) have stated that they were ordered by CRPF personnel to lie down in a drain near the L.P. School. Thereafter, they were beaten with bamboo stick by the security personnel and they were also kicked by them. The Commission can not disbelieve the evidence of these innocent villagers and that apart there is no reason why they would give false statement against CRPF personnel. They were examined first at the Government dispensary at Moran and after three days they were taken to the Dibrugarh Medical College Hospital where doctor found the injuries which were simple. Of course the doctors have stated in their evidence that injuries were 24 hours old. But only for this discrepancy it can't be said that there was no harassment by the CRPF personnel. The Commission also notes that Smti Lily Baruah (CW-12), Sri Srimanta Baruah (CW-13), Sri Jiban Baruah (CW-17) and Umakanta Gogoi (CW-16) were hospitalized. Srimanta Baruah (CW-13) was suffering from Hemophilia.

It is true that CRPF personnel while conducting search were apprehensive that militants would fire upon them. Therefore, the above

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harassment can't be said to be very serious. But the fact is that during the operation by CRPF personnel some kind of harassment took place;

Therefore the Commission is of the opinion that person named above were harassed by the CRPF personnel which cannot be said to be very serious in nature.

(4) The Commission has to determine if there was any lapse on the part of any authority, and if, so, to fix responsibility there of.

From the evidence of Sri Subhash Yadav (CW-24) the Commission finds that as soon as CRPF and police party entered in the area within the jurisdiction of Sivasagar police, he informed Mr. Anurag Agarwal, I.P.S. Superintendent of Police (CW -3). Mr. Anurag Agarwal informed Mr. Manabendra Deb Rai (CW-5) Addl. Superintendent of Police, Sivasagar who was in-charge as Mr. Shaymal Pd. Saikia, Superintended of Police, Sivasagar was on leave. From the evidence of Mr. Manabendra Deb Rai, (CW-5) we find that he offered help of Sivasagar Police, but Mr. Anurag Agarwal (CW-3) refused. In spite of such refusal, Mr. Manabendra Deb Rai informed S.I. Debojit Das (CW-7), O/C of Moranhat P.S. who immediately rushed to the place and put NAKA to prevent escape of extremist.

From the evidence of S.I. Subhash Yadav (CW-24) the then O/C of Moran P.S. we find that this officer was with the police party and CRPF in the area of operation but did not inform S.I. Debojit Das (CW-7) though a part of the area operation falls under Sivasagar District. According to this witness, (CW-24) the distance between Moran P.S. and

Moranhat P.S. was of one K.M. and he also knew the mobile phone number of S.I. Debojit Das, (CW-7) O/C, Moranhat P.S.

From the above evidence the Commission is of the opinion that Mr. Anurag Agarwal, (CW-3), Superintendent of Police Dibrugarh ought to have accepted the help of Sivasagar Police offered by Mr. Manabendra Deb Rai (CW-5) and similarly S.I. Subhash Yadav (CW-24) ought to have informed Sri Debojit Das (CW-7) O/C of Moranhat P.S. about the above operation or at least before entering Rangoli Himpara village within Sivasagar district. Had there been joint operation by police personnel of Sivasagar and Dibrugarh districts escape of ULFA militants could have been prevented. The Commission accepts the opinion of Mr. Alok Perty, I.A.S, Addl. Chief Secretary, Government of Assam that Para Military Force like CRPF should work under direct guideline of local police who is familiar with the geography of the area. Army and other Para Military Forces, under the provisions of Cr. P.C. come in aid of Civil Authority while doing in Law & Order duty including operation against militants. The authority of the District Magistrate and the Superintendent of Police of the district is supreme and above forces must work under direction of these two officers. Therefore, the Commission holds that in the present case CRPF party committed a mistake by not taking any Assam Police personnel, who were present, while conducting operation in Rangoli Himpara village.

(5) The Commission is to suggest measure(s) to be taken to prevent recurrence of such incident.

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While dealing with this point the Commission would like to refer to the report of the Enquiry Committee headed by Mr. Alok Parti, Addl. Chief Secretary, Government of Assam. Mr. Parti has inter-alia opined that the police administration of Dibrugarh district was very alert and active and such operation was carried out as it was un-avoidable after receiving reliable source information. Mr. Parti has further observed, after hearing slogans from the members of the public that Sivasagar Police Prashasan Zindabad and Dibrugarh Police Prashashan Murdabad, clearly indicated that police administration Sivasagar was playing to the gallery and attempted to seek public support conveying their condemnation of the Dibrugarh Police Administration, which was un-professional and objectionable. He has also opined that in this case, members of ULFA clearly knew that Sivasagar Police Administration compared to Dibrugarh Police Administration was weak and un-professional and therefore took full advantage of this fact. Mr. Parti has suggested that CRPF being a Para Military Force should work only under the direct guideline of local police. He has also stated in his report that escape of ULFA extremists could have been prevented if the house of Late Dulen Baruah would have cordoned off effectively and this could have been possible if only local police had accompanied the CRPF. According to Mr. Alok Parti Govt. of Assam, must device strategies and plan to strengthen intelligence gathering mechanism and also to build confidence amongst villagers of ULFA dominated area who would resist entry of ULFA cadres. He has further stated that police force did not appear to be highly professional and properly trained, and well equipped with modern weapons. He has

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suggested police force must be equipped better than the terrorist and must also be trained thoroughly.

According to Mr. Parti, the members of ULFA clearly knew that the Sivasagar Police Administration compared to Dibrugarh Police Administration was weak and un-professional and therefore, they took advantage of this fact. The Commission fails to understand the basis of such remark as there was nothing on record to substantiate this fact. The Commission can take Judicial Notice of the fact that Assam Police in the entire state is equally equipped with arms and other sophisticated weapons and same training is also imparted to them. Mr. Parti was influenced by slogan shouting by the public of the area which was very unfortunate. If one goes only by slogan shouting, fingers can be pointed on all matters of the Administration of the State. The Commission therefore unable to accept the comments of Mr. Parti. It may be noted that operation at Rangoli Himpara village was conducted by the CRPF not by State Police. Therefore, it can't be said that Assam Police was inefficient in conducting such operation of that village. In fact according to police, ULFA militants entered Dibrugarh district and thereafter went towards Sivasagar district. Therefore, the Commission cannot accept that ULFA militants took advantage of inefficiency of Sivasagar police administration as observed by Sri Alok Parti, Addl. Chief Secretary to the Govt. of Assam.

The Commission agree with the suggestion of Mr. Parti that escape of ULFA extremists could have been prevented if local police had accompanied CRPF. The Commission has already stated that Para Military Forces like CRPF come in-aid of civil power and therefore they

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should not be allowed to operate independently. The Commission suggests that, the District Magistrate and the Superintendent of Police should ensure involvement of Assam Police in such operation by Para Military Forces like CRPF.

Mr. Parti suggested that Political Department must device strategies and plan to strengthen intelligence covering mechanism. It is true that intelligence covering mechanism not only in the state of Assam and but entire country should be strengthen and in fact now our country is getting intelligence report even from America, United Kingdome and other Foreign Countries. But in the present case there was absolutely no failure of intelligence report. The Dibrugarh Police got source information regarding movement of ULFA in areas in question and though they could not apprehend the ULFA extremists, they could intercept the Sumo vehicle where a member of the ULFA namely Hiteswar Konwar was apprehended and interrogated.

✓ The Commission is of the opinion that Police Forces of one district should act jointly with such forces of other districts to prevent escape of militants during operation. In addition to the above suggestion the Commission has no other suggestion to make regarding recurrence of such incidents. In fact so long activities of the extremists are there, there is always possibility of encounter between security force and militants and death of the militants and security forces is also unavoidable. Only thing the security forces have to ensure that there is no fake encounter and secondly there is no loss of lives of innocent person and less loss of lives of security forces, which is possible if security forces are properly trained.

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Co-operation of the Deputy Commissioner, Jorhat and
the staff.

This Commission was constituted by the Political Department (A), Dispur by Notification Dtd. 7th June' 2008. The Chairman received the copy of Notification on 19/6/2008 and took over charge on 22/6/08. Sri Ashim Kumar Chetia, A.C.S., Addl. Deputy Commissioner, Jorhat was appointed as Secretary of the Commission who took charge on 17th July' 2008. The Deputy Commissioner, Jorhat by letter dtd. 22nd June' 2008 informed the Principal Secretary, Govt. of Assam Home & Political Department that rooms for the Commission and the Office, one car for the Chairman, one computer etc. were arranged by Deputy Commissioner, Jorhat. The members of the staff namely three members of Gr-III staff, three members of Gr-IV staff including steno and a Jr. Asstt. with computer knowledge were appointed. The Commission places on record its appreciations to Mrs. L.S. Changsan, I.A.S., the then Deputy Commissioner, Jorhat, Mr. A.K. Chetia, A.C.S., Addl. Deputy Commissioner, Jorhat and Secretary to the Commission and other members of the staff of the office of Deputy Commissioner more particularly Nazarat Branch for helping this Commission to conduct the proceeding smoothly though necessary financial help was not received from the Home & Political Department. After transfer of Mr. A.K. Chetia, A.C.S., Mrs. Tamiza Rahman, A.C.S. took over charge as Secretary of the Commission as per direction of the Deputy Commissioner, Jorhat. Though her formal appointment letter from the Political Department was received late she willingly helped the Commission in conducting the

L.S. Changsan

proceeding. Both Mr. Chetia and Mrs. Rahman very efficiently arranged visit of the Commission for local inspection at Himpara village and secondly for recording the evidence at Moran of the witnesses of Rangoli Himpara village. Mrs. Rahman also helped the Commission in preparation of the report. After Mr. R.C. Jain took over charge of the office of the Deputy Commissioner, Jorhat he also allowed Mrs. Rahman to assist the Commission in spite of the fact that she was otherwise busy. The Commission also places on record its appreciation of the members of the staff of the Commission. In absence of any counsel except the counsel for Sri Tileswar Lahon, Mrs. Chandana Kaushik Baruah, Advocate ably assisted the Commission for recording of evidence of the witnesses and also in preparing this report. She had to go through the entire record for faithfully discharging her duties. The Commission had already recorded the appreciation to the persons who assisted the Commission for visiting Moran twice and for recording of evidence.

The role of the Home & Political Department.

The Commission received step motherly treatment from Home & Political Department. In spite of bills submitted and reminders issued the amount was not timely received. Though sanctions of fund were issued from time to time by Political Department in absence of follow up action by the said Department the amount was not drawn and sent on time. From the month of December onwards even the owner of the car refused to provide the vehicle for Chairman. Mrs. Rahman, Secretary of the Commission was pleased enough to offer fuel for the car which was refused by the Chairman. I hope and trust that in future if such

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Commission is constituted, proper action would be taken so that such Commission does not suffer financial problem as faced by this Commission.

For non-payment of honorarium to the staff of the members of the Commission, they reluctantly assisted the Commission and therefore, there was delay for submission of the report. Another thing the Commission would like to place on record is that according to Political & Financial Departments Rs. 2500/- per month was fixed for the stenographer. The Commission found it difficult to get a competent stenographer. With great difficulty Sri Tosheswar Saikia, who retired as a stenographer from the office of the District and Sessions Judge, Jorhat agreed to assist the Commission. He had to take dictation and thereafter read it to the person operating the computer and it took long time for typing of the report.

At the request of the Commission the term of the Commission was extended up to 6th of February' 2010. As per direction of the Chairman the Secretary of the Commission informed that report is being prepared and no request was made to extend the term. It was so done as according to Chairman such extension was not necessary as while preparing the report it was not necessary to exercise any power by the Commission such as summoning of witnesses etc. Moreover, under Section 7 of the Commission of Inquiry Act. 1952 the Government has to close the Commission. The Chairman desires that Commission may not be closed till the amount due to the Commission is fully paid.

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Though formally the term of the Commission ended on 6th February' 2010 at the direction of the Chairman, the Secretary did not ask for extension of time as stated earlier. The Chairman, the Secretary and the counsel for the Commission and members of the staff worked almost everyday for preparation of report and the draft report was completed on 15th March' 2010. Typing of final report took some time as the computer operator Sri Alok Kalita was appointed as junior assistant in the office of the Deputy Commissioner, Jorhat w.e.f. 3/12/2009 and his services were available after office hours or whenever he is free from official work. However, the report has now been completed and it would be submitted to the State Government after binding etc.

The amount now due to the Commission is as follows –

- 1) Sitting fee to the Chairman- Rs. 2,17,500.00
- 2) Honorarium to the members of the staff–Rs. 63,000.00
- 3) Fee to the Counsel – Rs. 1,01,500.00
- 4) Hire charges for the vehicle Rs. 3,48,650.00
- 5) Cost of fuel – Rs. 96,000.00
- 6) Honorarium to Secretaries Mr. A.K. Chetia Rs. 80,000.00 and Mrs. T. Rahhman Rs. 1,20,000.00
- 7) Honorarium to Sri Alok Kalita and Sri Mukul Borchetia Rs. 15,000.00 each.
- 8) Misc expenditures Rs. 50,000.00

It may be stated that not a single paisa was paid to the counsel for the Commission and also the Chairman

S. N. Choudhury

Both Mr. Chetia and Mrs. Tamiza Rahman worked as Secretary of the Commission, which is of special nature and occasional in character. This is not in their normal duty and the work is also laborious. Both of them were appointed by the Government. Therefore, the Commission is of the opinion that they are entitled to get honorarium under FR 46 (b) read with FR 9 (9). The Commission has come across judicial pronouncement of High Court in this regard which is in their favour. The Commission has calculated the honorarium as indicated above @ 10,000.00 per month.

Sri Alok Kalita, computer operator and Sri Mukul Borchetia, a member of the Gr-IV staff were appointed as junior assistant and Gr. IV staff respectively in the office of the Deputy Commissioner w.e.f. 3/12/2009. But they assisted the Commission in preparing report. Therefore, the Commission recommend that a sum of Rs. 15,000/- each to be paid to the above two persons as honorarium.

Compensation—The Commission considered payment of compensation to the family members of Late Dulen Baruah. Late Dulen Baruah left behind his wife and two sons—one is deaf and dumb boy. The Hon'ble Chief Minister immediately announced that a compensation would be paid to the above family members of Late Dulen Baruah and accordingly the sum of Rs. 3,00,000.00 was paid immediately. As per direction of the Hon'ble Chief Minister Sri Srimanta Baruah (CW-13) has also been provided with a Govt. job in the office of the Deputy Commissioner, Sivasagar.

S. N. S. S.

The Commission is of opinion that in view of the above positions no further compensation need be recommended of payment.

Before concluding the Chairman would like to sum up the findings as stated in the report----

(1) Late Dulen Baruah S/o. Late Dimba Baruah of village Himpara P.S. Moran, District-Sivasagar died due to firing by CRPF personnel and not due to cross-firing between alleged ULFA militants and the CRPF; but the firing by CRPF personnel was accidental and there was no intention to kill him.

(2) The members of the CRPF team conducting the operation at Himpara village were responsible for the incident but it was accidental and not intentional.

(3) There was harassment by CRPF personnel of some persons of Himpara village but considering the nature of the injuries which were simple and apprehension that the militants may fire anytime upon the CRPF personnel the Commission holds that it can't be said that harassment was serious.

(4) The operation for apprehending the ULFA militants would have been successful had Mr. Anurag Agarwal, I.P.S. the then Superintendent of Police, Dibrugarh would have accepted the help offered by Mr. Manabendra Deb Rai, A.P.S., the then Addl. Superintendent of Police, Sivasagar, who was holding the charge of the office of the Superintendent of Police, Sivasagar. The Commission is also of the opinion that had there been joint

S. M. Chatterjee

operation by police personnel of Sivasagar and Dibrugarh districts, escape of ULFA militants could have been prevented. S.I. Subhash Yadav the then O/C of Moran P.S. while dividing the police and CRPF personnel in three groups, should not have allowed CRPF personnel to conduct the operation without the help of Assam Police, who were acquainted with the area in question. He also ought to have informed the O/C Moranhat P.S. of Sivasagar District over his mobile phone and requested for his help as the operation was done in the area falling under jurisdiction of Moranhat P.S.

(5) The Commission also is unable to accept the comments of Mr. Alok Parti, I.A.S., that Dibrugarh Police was more efficient and professional and Sivasagar Police was un-professional.

(6) The State Government has requested the Commission to suggest measures to prevent recurrence of such incident.

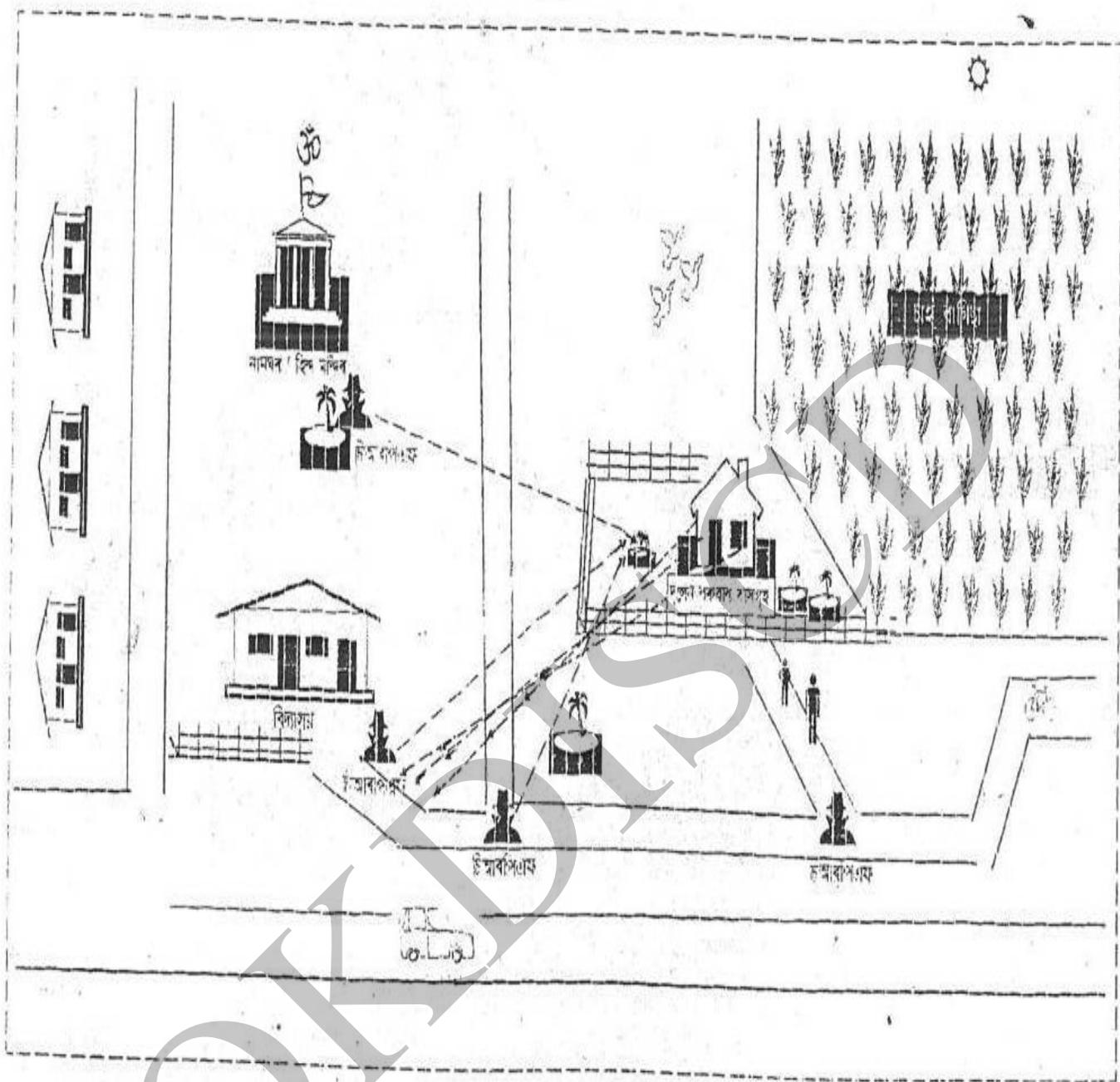
The Commission has given some suggestion regarding conducting such operation by police forces and other Para Military Forces and while doing so they are to ensure the prevention of loss of life of innocent person. Such type of incident would definitely occur so long there would be militancy in the state. Apart from loss of life of innocent person attempts should be taken to prevent less loss of life of both militants and security forces and also to prevent fake encounter. For this purpose police and security personnel should be properly trained.

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Secretary may transmit all records of the Commission to Political (A) Department Govt. of Assam as required under rule 7 of The Commissions of Inquiry (Central) Rules, 1972.

S. N. Phukan 28/4/72
(Justice S.N. Phukan)
Chairman
Justice S. N. Phukan
Commission of Inquiry
Jorhat.

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**GOVERNMENT OF ASSAM
DEPARTMENT OF HOME & POLITICAL**

**Action Taken Report on the
Report submitted by
Justice (Retd.) S.N. Phukan Commission of Inquiry.**

Dated Dispur, the 16th July, 2010.

Action Taken Report on the Report submitted by Justice (Retd.) S.N. Phukan Commission of Inquiry.

(A) Notification and Terms of Reference:

Justice (Retd.) S.N. Phukan Commission of Inquiry was constituted vide Government Notification No.PLA.307/2008/2 dated 7th June, 2008 under the Commissions of Inquiry Act 1952, to enquire into the circumstances leading to the killing of Dulen Baruah, son of late Dimba Baruah of village Himpara, P.S. Moran in the district of Sivasagar on 13/4/2008.

(B) The terms of reference of the Commission were as under :

1. To ascertain circumstances leading to the killing of Dulen Baruah, son of late Dimba Baruah of village Himpara, P.S. Moran in the district of Sivasagar on 13/4/2008
2. To ascertain if any person(s), organization (s) are responsible for the incident.
3. To ascertain the truth regarding allegations of harassment of the local public in Himpara area on 13/4/2008.
4. To determine if there was any lapse on the part of any authority, and if so, to fix responsibility thereof.
5. To suggest measure(s) to be taken to prevent recurrence of such incidents and
6. Any other matter which is relevant to the incident as may be decided by the Commission.

(C) The Commission submitted its report on the 28/4/2010.

(D) Terms of reference No.1- To ascertain circumstances leading to the killing of Dulen Baruah, son of late Dimba Baruah of village Himpara, P.S. Moran in the district of Sivasagar on 13/4/2008

The Commission holds that Dulen Baruah died due to firing by CRPF personnel but his death was accidental and the CRPF personnel did not fire at him with the intention of killing.

(E) Terms of reference No.2: To ascertain if any person(s), organization (s) are responsible for the incident.

The Commission rules out the involvement of any person(s) in the present incident.

(F) Terms of reference No.3: To ascertain the truth regarding allegations of harassment of the local public in Himpara area on 13/4/2008.

The Commission is of the opinion that there was harassment by CRPF personnel on some persons of Himpara village but such harassments cannot be said to be of very serious in nature.

State Government Decision: Noted.

(G) Terms of reference No.4: To determine if there was any lapse on the part of any authority, and if so, to fix responsibility thereof.

The Commission holds that in the present case CRPF party committed a mistake by not taking Assam Police Personnel who were present, while conducting operation in the Rangoli Himpara village.

State Government Decision: Necessary instructions/guidelines are already in existence for involvement of Assam Police in operation by Para Military. The matter of non-compliance of the existing instruction/guidelines would be inquired into further by the Department and action taken, if any one is found responsible.

H) Terms of reference No.5 : To suggest measure(s) to be taken to prevent recurrence of such incidents and

- (a) The Commission suggested that the District Magistrate and Superintendent of Police should ensure involvement of Assam Police in operations by Para Military forces like CRPF who come in aid of civil power and they should not be allowed to operate independently.

State Government Decision: The existing instructions that the State Police should be involved in all operations conducted by Para Military Forces would be again issued to all authorities and the District Magistrate and the Superintendent of Police would be instructed to ensure compliance.

- (b) The Commission has opined that police forces of one district should act jointly with such forces of other district to prevent escape of militant during operation.

State Government Decision: Inter District consultation and Joint Action/Operations are continuing. However, instructions would be reiterated to all concerned.

(c) The security Forces have to ensure that there is no fake encounter and secondly, that there is no loss of lives of innocent persons and less loss of lives of security forces, which is possible if security forces are properly trained.

State Government Decision: Adequate training in this regard are being provided to the police forces to avoid fake encounters and unnecessary loss of innocent lives.

(I) Terms of reference No.6: Any other matter which is relevant to the incident as may be decided by the Commission.

Regarding compensation, the Commission is of the opinion that since the family members of late Dulen Baruah were paid a sum of Rs.3 lakhs immediately after the incident and since one of his son have already been provided with a Government job in the office of the Deputy Commissioner, Sivasagar, no further compensation need be recommended for the family.

State Government Decision: Noted.