

**HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A**

Crl. A(J) No. 05 of 2021

1. Shri Rajib Nama Das, son of Sri Manindra Nama Das of Banduar, Amtali, P.S. Kakraban, District: Gomati Tripura.

.....Appellant

-VERSUS-

The State of Tripura.

..... Respondent.

Crl. A No. 14 of 2021

1. Sri Manindra Ch. Nama Das, son of late Rupchand Nama Das of Banduar, Amtali, P.S. Kakraban, District: Gomati Tripura.

.....Appellant

-VERSUS-

The State of Tripura.

..... Respondent.

Crl. A No. 05 of 2022

1. The State of Tripura, represented by the Secretary Govt. of Tripura, Home Department, Agartala, West Tripura.

.....Appellant

-VERSUS-

1. Smti. Maya Rani Nama Das, wife of Manindra Nama Das.
2. Smti. Ratna Nama Das, wife of Sri Rajib Nama Das of Banduar, Amtali, P.S. Kakraban, District: Gomati Tripura.

..... Respondents.

Crl. A No. 06 of 2022

1. The State of Tripura, represented by the Secretary Govt. of Tripura, Home Department, Agartala, West Tripura.

.....Appellant

-V E R S U S-

1. Sri Manindra Ch. Nama Das, son of late Rupchand Nama Das, resident of Banduar, Amtali, P.S. Kakraban, District: Gomati Tripura.

..... Respondent.

Crl. A No. 07 of 2022

1. The State of Tripura, represented by the Secretary Govt. of Tripura, Home Department, Agartala, West Tripura.

.....Appellant

-V E R S U S-

1. Shri Rajib Nama Das @ Raju, son of Sri Manindra Nama Das, resident of Banduar, Amtali, P.S. Kakraban, District: Gomati Tripura.

..... Respondent.

B _ E _ F _ O _ R _ E

HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Appellant(s)	:	Ms. V. Poddar, Advocate.
For Respondent(s)	:	Mr. Ratan Datta, Public Prosecutor.
Whether fit for reporting	:	YES

Judgemnt and order dated 20th February, 2023

JUDGMENT & ORDER

Heard Ms. V. Poddar, learned counsel appearing for the appellants. Also heard Mr. Ratan Datta, learned Public Prosecutor assisted by Mr. S. Debnath, learned Additional Public Prosecutor appearing for the State-respondent.

[2] All these appeals are consolidated and clustered for disposal by a common judgment and order. The appeals being Crl. A(J) No. 05 of 2021 and Crl. A. No.14 of 2021 have been filed under Section-374 of the Code of Criminal Procedure, 1973, the appeals being Crl.A. No.07 of 2022 and Crl. A. No.06 of 2022 have been filed under Section-377(4) of the Code of Criminal Procedure and Crl. A. No.05 of 2022 has been filed under Section-378(2) of the Code of Criminal Procedure, 1973 against judgment and order of conviction and sentence dated 19.03.2021 passed by the learned Sessions Judge, Gomati Judicial District, Udaipur, Tripura in connection with S.T.15(GT/U) of 2015 wherein, the convict-appellant, namely, Rajib Nama Das was sentenced to suffer RI for 5 years and fine of Rs.5,000/- under Section-304 Part-II . He was further sentenced to suffer RI for six months with a fine of Rs.1,000/- under Section-448 of IPC with default stipulations. The convict appellant, namely, Manindra Nama Das was sentenced to suffer RI for one year and fine of Rs.1,000/- for the offence committed under Section-325 of IPC with default stipulation. He was further sentenced to suffer RI for three months with a fine of Rs.1.000/- under Section-448 of the IPC.

[3] The facts which set the criminal law in motion, in short, are that on 03.09.2014, first information report was lodged by Smt. Bapi Rani Das, with the officer-in-charge of Kakraban P.S. alleging that on the previous night on 02.09.2014 at about 10-30 PM the accused persons namely Manindra Nama Das, Raju Nama Das, Prasenjit Nama Das, Smt. Maya Rani Nama Das, Smt. Ratna Nama Das, Ali Asraf and Sambhu Dey, armed with crowbar, rod and wooden file entered their house and assaulted her father Khokan Namadas and mother Smt. Chinu Rani Das. As a result of the assault her father and mother sustained bleeding injury in their head and they became senseless. They were shifted to Udaipur hospital by

maruti vehicle bearing No.TR 03 G 0636. Immediately they were referred to GBP hospital, Agartala. Her father Khokan Namadas succumbed to the injuries on the next morning. The FIR was lodged by the informant before the death of her father at the GBP Hospital at Agartala.

[4] On the basis of the aforesaid complaint dated 03.09.2014, Kakraban P.S. registered a case vide No.139 of 2014 dated 03.09.2014 under Sections-448/326/307/34 of IPC against the present accused persons and Investigating Officer took up the same for investigation. On completion of investigation, prima facie case having been appeared, the investigating officer submitted charge-sheet under Sections-448/326/307/323/34 of IPC adding Section-302 Part-II against the appellant to stand trial in the Court of law.

[5] Upon receipt of the charge-sheet and on perusal of the same, the learned Chief Judicial Magistrate, Gomati, Udaipur pleased to take the cognizance of offences punishable under Sections-448/326/307/323/34 of IPC read with Section-302 IPC against the appellant herein and thereafter the case was committed to the Court of learned Sessions Judge, Gomati Judicial District, Udaipur as the case was exclusively triable by the Court of Sessions.

[6] On receipt of the case record, charge under Sections-448/326/323/307/302/34 of IPC were framed against the instant appellants and thereafter the contents of the charge were read over to the appellants to which, they pleaded not guilty and claimed to be tried. During the course of trial, the prosecution has examined as many as 27 witnesses including the informant. Moreover, beside oral evidences, the prosecution side also relied on some documents. The accused persons have examined two defense witnesses and also adduced some documents.

[7] After closing the evidence of prosecution all implicating materials available from the evidence on record, were placed before the accused persons and their explanations were sought for at the time of their examination and recording statement under Section-313 of Cr. PC. The accused persons denied their involvement in the alleged offence and denied the veracity of all the prosecution evidence. However the learned trial Court considering the materials and record acquitted the accused persons namely, Smt. Maya Rani Nama and Smt. Ratna Nama Das from their liabilities and set them free.

[8] After examination of PWs the appellant were examined under Section-313 Cr. P.C. and after hearing argument of both sides, the learned Court below has observed thus:

“65. The convict Rajib Nama Das is hereby sentenced to rigorous imprisonment for five years and fine of Rs.5,000/-(Rupees five thousand) for the offence under Section 304 Part-II of IPC. In default to pay the fine he shall undergo further R.I. for 3(three) months.

66. The convict Rajib Nama Das is further sentenced to rigorous imprisonment for six months and fine of Rs.1,000/-(Rupees one thousand) for the offence under Section 448 of IPC. In default to pay the fine he shall undergo further R.I. for 1(one) month.

67. The convict Manindra Nama Das is hereby sentenced to rigorous imprisonment for one year and fine of Rs.1,000/-(Rupees one thousand) for the offence under Section 325 of IPC. In default to pay the fine he shall undergo further R.I. for 1(one) month.

68. The convict Manindra Nama Das is further sentenced to rigorous imprisonment for three months and fine of Rs.1,000/-(Rupees one thousand) for the offence under Section 448 of IPC. In default to pay the fine he shall undergo further R.I. for 1(one) month.

69. The fine money, if realized, shall be paid to the wife of the deceased Khokan Nama Das as compensation.

70. The period of detention undergone by the convicts shall be set off against the term of imprisonment as per provision of Section 428 of the Cr.P.C.

Both the sentences shall run concurrently.”

[9] Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 19.03.2021, the present appeal has been preferred by the appellants herein.

[10] Ms. V. Poddar, learned counsel appearing for the appellants has submitted that the order of conviction and sentence passed by the Court below suffers from serious illegality, impropriety and irregularity and as such, the same is required to be set aside. She has submitted that the examination of the appellants under Section-313Cr. P.C. was not done in accordance with law.

[11] She has argued that there were so many material omission and contradictions between the depositions of PWs.1 to 23 and 25, but, the learned Court below did not consider the same. The deposition of the present appellant while giving his statements during his examination as defense witness before the learned Court below was not at all considered or given due weight age. The part of evidence as relied upon the Court below were neither supported nor corroborated by the prosecution witnesses while giving their deposition before the Court below.

[12] PW-4 i.e. the I.O. of the present case has deposed that he seized one bamboo stick and iron rod from the place of occurrence but, the said alleged weapon was not sent to the forensic science laboratory to find out whether any blood stain was present or not in the said alleged weapon. From the depositions of PWs.2, 3, 4, 6, 14 and 18 it revealed that all are interested witnesses and they have some vested interest to punish the appellant by falsely implicating the appellants in the present case. She has further contended that there are so many improved versions in the depositions of PWs but the Court below did not consider the same and

convicted the appellants herein. Thus, the order of conviction and sentence needs to be interfered with.

[13] In support of the case of the appellants, learned counsel appearing for the appellants has placed her reliance upon a decision in the case of **P. Johnson and others v. State of Kerala**, reported in **1998 CRI. L. J.3651** at para-5 of the judgment wherein, the Court has held thus:

“5. The next submission advanced by the revision-petitioners is that all the witnesses are interested witnesses and no independent witness or any neighbour of the scene of occurrence have been examined. Admittedly, PWs-1 and 12 are brothers and they are the children of PWs -2 and 3. PWs-4 and 5 are also closely related to the injured. The prosecution case is that on hearing the noise of beating and commotion PWs- 2 and 12 rushed to the scene of occurrence. The scene mahazar marked as Ext. P-7 would go to show that there are houses near the scene of occurrence and the final report also contains the names of the other witnesses. But none of the independent witnesses has been examined in Court to lend support to the veracity of the injured persons. When it is the prosecution theory that on hearing the noise from the scene PWs-2 and 12 rushed to the spot other neighbours also could have come there hearing the quarrel. Thus even according to the prosecution case there ought to have been other independent witnesses witnessing the occurrence. But no explanation is forthcoming from the prosecution about the non-examination of the independent witnesses. And conviction has been fixed only on believing the evidence of the interested witnesses. As I have detailed above, the points raised with regard to the delay in filing the FIR, suppression of first report, non-examination of material witnesses and non-explanation of the injury on the accused stand unanswered by the prosecution. Therefore, I opine that the judgment of the Sessions Judge is not legal, proper and correct and this Court has to necessarily interfere by invoking its revisional jurisdiction.”

[14] Ms. Poddar, learned counsel appearing for the appellants has further relied on a decision in the case of **Tahsildar Singh and Another v. State of U.P.**, reported in **1959 Crl. L.J. 1231** at paragraph Nos.26 and 27 wherein, the Court has held as under:

“26. From the foregoing discussion the following propositions emerge: (1) A. statement in writing made by a witness before a police officer in the course of investigation can be used only to contradict his statement in the witness-box and for no other purpose; (2) statements not reduced to writing

by the police officer cannot be used for contradiction; (3) though a particular statement is not expressly recorded, a statement that can be deemed to be part of that expressly recorded can be used for contradiction, not because it is an omission strictly so-called but because it is deemed to form part of the recorded statement; (4) such a fiction is permissible by construction only in the following three cases: (i) when a recital is necessarily implied from the recital or recitals found in the statement ; illustration: in the recorded statement before the police the witness states that he saw A stabbing B at a particular point of time, but in the witness-box he says that he saw A and C stabbing B at the same point of time; in the statement before the police the word " only " can be implied, i.e., the witness saw A only stabbing B; (ii) a negative aspect of a positive recital in a statement; illustration: in the recorded statement before the police the witness says that a dark man stabbed B, but in the witness-box he says that a fair man stabbed B; the earlier statement must be deemed to contain the recital not only that the culprit was a dark complexioned man but also that he was not of fair complexion; and (iii) when the statement before the police and that before the Court cannot stand together; illustration: the witness says in the recorded statement before the police that A after stabbing B ran away by a northern lane, but in the Court he says that immediately after stabbing he ran away towards the southern lane; as he could not have run away immediately after the stabbing, i.e., at the same point of time, towards the northern lane as well as towards the southern lane, if one statement is true, the other must necessarily be false. The aforesaid examples are not intended to be exhaustive but only illustrative. The same instance may fall under one or more heads. It is for the trial Judge to decide in each case' after comparing the part or parts of the statement recorded by the police with that made in the witness-box, to give a ruling, having regard to the aforesaid principles, whether the recital intended to be used for contradiction satisfies the requirements of law.

27. The next point is what are the omissions in the statement before the police which the learned Sessions Judge did not allow the accused to put to the witnesses for contradicting their present version. The learned Counsel for the appellants contends that the accused intended to put to the witnesses the following omissions, but they did not do so as the learned Sessions Judge disallowed the two questions put to P. W. 30 and made a considered order giving his reasons for doing so, and that the learned Counsel thought it proper not to put the same questions or other questions in regard to omissions to P. W. 30 or to the other witnesses that followed him. The said omissions are: (1) The warning by the members of the gang on their arrival to the audience at the music party not to stir from their places; (2) the presence of a gas lantern; (3) the chase of Bharat Singh by the assailants; (4) the scrutiny of the dead bodies by the gang; and (5) the return of the gang in front of the house of Bankey. The learned Counsel for the respondent contests this fact and argues that only two omissions, namely, the presence of a gas-lantern and the scrutiny of the dead bodies by the gang, were put in

the cross-examination of P. W. 30 and no other omissions were put to him or any other witness, and that indeed the order of the learned Sessions Judge did not preclude him from putting all the omissions to the witnesses and taking the decision of the Judge on the question of their admissibility. He further contends that even before the learned Judges of the High Court the Advocate for the appellants only made a grievance of hi,,; not having been allowed to put the aforesaid two omissions and did not argue that he intended to rely upon other omissions but did not do so as he thought that the learned Sessions Judge would disallow them pursuant to his previous order. Before the High Court an application was filed for summoning eight eye- witnesses on the ground that the learned Sessions Judge did not allow the Counsel for defence to put the omissions amounting to material contradiction to them, but no mention was made in that application of the number of omissions which the accused intended to put to the eye-witnesses if they were summoned. That application was filed on May 1, 1957, but no attempt was made to get a decision on that application before the arguments were heard. Presumably, the Court as well as the parties thought that the application could more conveniently be disposed of after hearing the arguments. On July 30, 1957) 1 after the appellants were fully heard, that application was dismissed and the detailed reasons for dismissing it were given in the judgment, which was delivered on September 11, 1957. The judgment of the learned Judges of the High Court clearly indicates that what was argued before them was that two omissions sought to be put to P. W. 30 were disallowed and therefore the accused did not put the said omissions to the other witnesses. It was not contended on behalf of the accused that other omissions were intended to be used for contradiction, but were not put to the witnesses as the Advocate thought that in view of the order of the learned Sessions Judge they would not be allowed automatically. The learned Judges held that the said two omissions amounted to material contradiction and that the learned Sessions Judge was wrong in disallowing them, but they ignored those two circumstances and based their findings on matters of greater certainty. If really the Judges had made a mistake in appreciating the arguments of the learned Counsel for the appellants in the context of omissions, one would expect the accused to mention the said fact prominently in their application for special leave. Even if they omitted to mention that fact in the application for special leave, they could have filed an affidavit sworn to by the Advocate, who appeared for them before the learned Judges of the High Court, mentioning the fact that in spite of the argument specifically directed to the other omissions the learned Judges by mistake or over-sight failed to notice that argument. The learned Counsel who argued before us did not argue before the High Court, and, therefore, obviously he is not in a position to assert that the Judges committed a mistake in omitting to consider the argument advanced before them. But he made strenuous attempts before us to persuade us to hold that there must have been a mistake. He would say that the learned Counsel had in fact relied upon all the aforesaid omissions in support of his contention that there was development of the case of the prosecution from time to time and

therefore he must have also relied upon the said omissions in the context of the statements made under s. 162 of the Code of Criminal Procedure; on the other hand, the fact that the learned Judges considered all the alleged omissions in connection with the said contention and only considered two omissions in regard to the contention based on s. 162 of the Code is indicative of the fact that the learned Counsel, for reasons best known to him, did not think fit to rely upon all the alleged omissions. The deposition of P.W. 30 also shows that only two omissions in the statement before the police, viz., the existence of a gas-lantern and the scrutiny of the dead bodies by the gang, were put to him in cross-examination and the learned Sessions Judge disallowed those questions on the ground that the learned Counsel was not able to show any law entitling him to put the said questions. Though the witness was examined at some length no other alleged omissions in the statement before the police were sought to be put to him. It would be seen from the short order made by the learned Sessions Judge at the time each one of the two questions were put, that the learned Sessions Judge did not give a general ruling that no omissions in a statement before the police could be put to a witness. The rulings were given, having regard to the nature of the omissions relied upon. But after the entire evidence of P. W. 30 was closed, the learned Sessions Judge gave a considered order. Even in that order, he did not rule out all omissions as inadmissible, but clearly expressed the view that if what was stated in the witness-box was irreconcilable with what was omitted to be stated in the statement, it could go in as material contradiction. Even after this order, it was open to the appellants to bring out all such omissions, but no attempt was made by them to do so. These circumstances also support the impression of the learned Judges of the High Court that what was argued before them was only in respect of the two specified omissions put to P. W. 30 in his cross-examination. We, therefore, hold that only two omissions relating to the existence of the gas-lantern and the scrutiny of the faces of the deceased by the appellants were put to P. W. 30 and were intended to be put to the other witnesses, but were not so done on the basis of the ruling given by the Court.”

[15] Mr. R. Datta, learned Public Prosecutor appearing for the respondent-State has submitted that total 27 numbers of witnesses were examined including the son, daughter and victim wife of the deceased and the neighbouring independent eye witnesses who, on hearing the noise, rushed to the spot and witnessed the occurrence. The medical and police witnesses and the other material witnesses have also been examined.

[16] It has come out clear in the evidence of the daughter, son and the victim wife of the deceased and the other independent witnesses that the accused persons entered into the house of the deceased Khokan Namadas at about 10/10.30 PM and subjected him and his wife, son and daughter injuring them grievously which resulted to the death of deceased Khokan Namadas on the next day at GB Hospital, Agartala. The evidence of the prosecution to this extent is beyond the shadow of doubt and could not be shaken in cross-examination by the defence.

[17] The oral evidence has been corroborated by the medical evidence of the doctors as regards the injuries and cause of the death of the deceased and injuries to his wife being grievous in nature. Motive of the assault also has been brought out in the evidence i.e. there was ongoing fierce enmity between both the families over the issue of tying the pigs of the complaining party to the detriment and discomfiture of the accused party.

[18] The so called discrepancies in the narratives of the eye witnesses, as has been sought to be banked upon by the defence, are minor in nature and do not impair the core value and credibility of the evidence of the PWs. On the said premises, the learned P.P. has maintained that the prosecution has successfully proved the charges against the accused persons and accordingly urged for conviction of the accused persons on all the counts of charges and for their exemplary punishment.

[19] In regard to the discrepancies in evidence as to details and manner of assault were patently of minor character and cannot detract from evidentiary value of eyewitnesses, learned counsel appearing for the respondent relied upon a decision of the Apex Court in ***Chand Khan and***

Another v. State of Uttar Pradesh, reported in (1995) SCC 2140, wherein it was held thus:

“10. It was urged on behalf of the appellants that as the trial Court gave detailed reasons for disbelieving the evidence of the prosecution witnesses the High Court was not justified in interfering with the same even if another reasonably possible view of the evidence in favour of the prosecution might be taken. Having heard the learned counsel at length and seen the judgments of the learned Courts below in the light of the evidence on record, we find that the High Court committed no error or injustice in interfering with the order of acquittal for it has noticed all the salient features of the case in the judgment of the trial Court, discussed them well and disapproved them for cogent and justified reasons. We are in complete agreement with the High Court that the judgment of trial Court was perverse and deserved to be set aside.

12. In negating the prosecution version the trial Court first held, for reasons given, that the assault on Faheem Khan in the afternoon by Chand Khan could not be a motive for committing the murder of Shah Alam and that no other motive was ascribed by the prosecution. Even if we proceed on the basis that the prosecution failed to prove the genesis or motive and that the above finding of the trial Court in this regard is unexceptionable still then this appeal cannot succeed on that score for proof of motive is not essential for success of a prosecution case where - as in the instant case - the ocular testimony in support of it is convincing and reliable. Indeed, as our discussion to follow will show the findings recorded by the trial Court for discarding the evidence of the four eye witnesses are based either on presumption, surmise and conjecture or on undue and unjustified reliance upon minor and immaterial contradictions.

17. On a close analysis of the materials on record we are of the opinion that the High Court was fully justified in making the above comments. That Kaisher Khan (P.W.2), Babar Khan and Irshad Khan were present at the material time as testified by the four eye witnesses was admitted by the defence. It was also admitted that besides Shah Alam the above three persons as well as lady members of the house sustained injuries. However, according to them, they had beaten Shah Alam and other male members in exercise of their right of private defence and the ladies sustained simple injuries as they had then come out of the house. The trial Court therefore was not at all justified in disbelieving even the presence of Irshad Khan, Babar Khan and Kaisher Khan at the spot. Then again, keeping in view the fact that the injuries sustained by Sm. Naeema Parveen could be caused by a sharp edged weapon only and it being not the case of the defence that they had with them any such weapon the finding of the trial Court that Sm. Naeema Parveen and Sm. Raees Begum had accidentally sustained their injuries must be said to be based on conjecture only.

18. Another reason which weighed with the trial Court in disbelieving the prosecution case was that there were discrepancies in evidence as to the details and manner of assault. While detailing those discrepancies the trial Court observed:

"According to the complainant Keramat Ali Khan that cot was lying just in front of the main door of his house at a distance of only 2 to 3 steps from the door and the entire beating outside his house had taken place near that cot and the last fatal blow of the chhuri was also inflicted by Shabbu accused on Shah Alam at only 2 or 3 steps in front of his main door. On the other hand, according to Sm. Naeema Parveen, that cot was lying at 6 or 7 steps in front of the main door of the house. According to P.W. Kaisher Khan, to whom that cot belonged, the cot was lying by the side of his chapper, i.e., towards the north-west of the complainant's door and, according to him it was lying at 6 or 7 steps from that door towards the left side. According to P.W. Mardan Mian alias Kallan Mian also, that cot was lying at 7 or 8 steps towards the north-west from the complainant's door. P.W. Keraman Ali Khan, at first, stated before me that the accused-persons had beaten Shah Alam etc, towards the east of the cot. Then he stated in the next breath that some of them were beating on one side, while the others were beating on the other side of the cot. Further on he stated that the victims were roaming around that cot, while being beaten, and the something has been stated by some other witnesses."

21. By frequent recourse to and reliance upon the words "might be" and "might have" in the above quoted passage the trial Court, instead of finding out which of the contending versions was correct and acceptable, gave out a version of its own relying solely on presumption, surmise and conjecture. The trial Court would have been, on a proper discussion and appraisal of the evidence, fully justified to hold that the prosecution case was unreliable and record an order of acquittal in favour of accused without going into the question as to whether the defence case was true, for burden of proof was upon the prosecution. Equally justified the trial Court would have been in recording such an order if it found the defence case probable. But it was not at all justified to make out a third case entering into the domain of speculation. The High Court was, therefore, right in basing its decision on a fresh and proper appraisal of the evidence leaving aside the obstinate findings of the trial Court. Having gone through the record we do not find any reason to differ from the decision so arrived at by the High Court.

[20] Mr. Datta, learned Public Prosecutor, appearing for the respondents has further relied upon a decision of this Court in the case of

Ranjit Sarkar v. State of Tripura, reported in (2013) 1 TLR 772, wherein it has been held that:

“The statements made by the witnesses before the investigating officer, being the earlier statements made by them with reference to the facts of the case are, no doubt, a valuable material for testing the veracity of the witnesses examined before the Court with reference to those statements, which happened to be at variance with the earlier statements. The statements made during police investigation are not itself substantive evidence. If a witness during examination makes a statement that he made such statement to the police officer but he is not contradicted with his previous statement as per the procedure prescribed by law, defence cannot claim advantage of the same. In the statements of the witnesses recorded during cross-examination as reproduced above, to which our attention has been drawn, cannot be attached with any importance since it was not recorded according to the procedure prescribed by law drawing attention of the witness to such statement and contradicting him thereby.”

[21] Now, to reach at a definite conclusion about what offence the accused-appellants have actually committed, we have gone through the evidence brought on record.

[22] PW-18 Chinu Namodas, wife of deceased Khokan Namodas, has deposed that on the night of incident at about 10.00 p.m. she along with her husband, son Debu Nama Das and daughter Bapi Nama Das were taking dinner in their hut. At that time Manindra Nama Das, Rajib Nama Das, Maya Rani Nama Das and Ratna Nama Das started abusing them as to why they had tied up their pig on the southern side of their house. Their house and the house of the accused persons are situated adjacently. As they were abusing, she (PW-18) first came out from her hut and found Manindra Nama Das inside her house complex.

[23] He then gave her a blow by a shabal on her head. She raised alarm and then and there, Rajib Nama Das, Maya Rani Nama Das and Ratna Nama Das entered her house. Hearing her outcry, her husband Khokan Nama Das and children came out from the hut and then Rajib

Nama Das first gave a blow with a lathi on the head of her husband. Seeing the blow on her husband she lost her sense and regained sense thereafter at ILS Hospital, Agartala after 9 days. After regaining sense she heard that her husband died at GBP Hospital, Agartala on the following day of the incident. She also heard that, her son and daughter also got injured due to assault by Maya Rani Nama Das & Ratna Nama Das. She identified all the said 4 accused persons in the electric lights of their house. She identified accused Rajib Nama Das, Manindra Nama Das, Maya Rani Nama Das and Ratna Nama Das in the dock.

[24] PW-26 Dr. Juthika Debbarma, Asst. Professor, Department of Forensic Medicine and Toxicology, AGMC & GBP Hospital, Agartala, deposed that on 03.09.2014, she conducted autopsy upon the dead body of Khokan Ch. Nama Das, a male aged about 55 years and on examination, she found the following injuries:

1) Stitched wound measuring 5cm x 0.3 cm x bone deep vertically on the left side of the forehead to left frontal area of the scalp, anterior end of the wound was 6.5 cm above the left eye brow and 5cm from mid line. On removing the stitches, extravasation of blood was found present in the layers of the scalp over the left frontal, bilateral parietal region and bilateral occipital region and in the left temporal is muscle.

2) Skull – Depressed fracture measuring 5cm x 4cm on the left frontal bone.

3) Brain & Meninges – Congested, Duramater was intact. Subdural haemorrhage was present over convexities of left fronto- temporo – parietal lobes, right fronto – parietal lobes and base of right fronto temporal lobes. Subarachnoid haemorrhage was present over the bilateral cerebral hemispheres and cerebellum. Contusion was present over the convexities and base of bilateral frontal lobes and base of right temporal lobe. Brain stem haemorrhage was present. Brain was congested and edematous.

4) Multiple abrasions – contusions were present on the back of right forearm, measuring 21cm x 12 cm, 4cm above the wrist joint.

5) *Reddish color abrasion measuring 2cm x 1.5 cm was present on the back of right elbow joint.*

6) *Reddish color abrasion measuring 3cm x 3cm was present on the back of left elbow joint.*

She opined that the cause of death was head injury produced by impact with hard and blunt object. All the injuries were ante mortem in nature and were of fresh duration at the time of death. The viscera was preserved to rule out associated poisoning. She has further stated that the injuries which were found in corpse of the deceased can be caused by use of iron rod and bamboo stick.

Her cross-examination is of only three lines to the effect that she did not mention in the PM report that this type of injuries can be caused by iron rod or bamboo stick. She denied the suggestion that this type of injuries cannot be caused by iron rod or bamboo stick."

[25] It is clear from the evidence of PW-18 Chinu Rani Namodas, wife of deceased Khokan Namadas that at about 10/10.30 PM when they were taking dinner in their hut the accused Manindra entered their house armed with shabal and started abusing them as to why they had tethered their pig on the southern side of their house. As soon as she came out from her hut Manindra gave blow in her head with a shabal. Then and there accused Rajib Nama Das, Maya Rani Nama Das and Ratna Nama Das entered her house and then Rajib Nama Das first gave a blow with a lathi on the head of her husband. Seeing the blow on her husband she became senseless and regained sense thereafter in ILS Hospital, Agartala after 9 days. After regaining her sense she learned about the death of her husband in the hospital.

[26] There is nothing in the evidence of PW-18 to doubt her accounts in so far as she has stated about the accused Manindra assaulting in her head with a crowbar and the accused Rajib assaulting her husband Khokan Nama Das with a lathi. In her cross-examination nothing material has transpired to disbelieve her accounts about the assault by the said

accused persons on her and her husband. Both the feuding parties being families of two full blooded brothers and close neighbours, there cannot be any doubt about the identification of the accused persons by the victim and her family members and other PWs.

[27] The evidence of PW-14, the informant-cum-daughter of the deceased, is also found to be in clear corroboration to PW-18 to the effect that all the accused persons entered into their house and Manindra Nama Das hit her mother on her head by a sabal and Rajib Nama Das assaulted her father Khokon Nama Das by a wooden file on different parts of his body. She and her brother Debu Nama Das also were assaulted by the accused persons when they came forward to the rescue of their parents. Her father died on the next day at GB hospital. Her cross-examination also does not show any material infirmity so as to disbelieve her statement about the assault by accused Manindra and Rajib on her mother and father respectively by shabal and lathi resulting to the death of her father on the next morning.

[28] The evidence of PW-6, the son of the deceased, also stands in clear corroboration to PW-18 and 14 to the effect that during the quarrel Maya Rani and Ratna handed over bamboo lathi and iron rod to Manindra and Rajib. Maya Rani handed over iron rod to Manindra and Ratna handed over bamboo lathi to Rajib. Saddam Hossen and Dilwar Hossen were present there and tried to resist them but Manindra Nama hit his mother with iron rod and Rajib hit his father with bamboo lathi indiscriminately. His father died on the next day at GB hospital. His cross-examination also does not show any material infirmity so as to disbelieve his evidence about the assault by accused Manindra and Rajib on her mother and father

respectively by shabal and lathi resulting to the death of her father on the next morning.

[29] Further, the evidence of PW-2 Dilwar Hussain, a neighbour, also squarely supplements the other PWs to the effect that on 02.09.2014 at about 10/10.30 p.m. they were playing luddu in the house of Saddam Hossein. At that time they heard hue and cry in the house of Khokan Nama and rushed there to find Maya Rani and Ratna passing on rod and bamboo lathi to accused Manindra and Rajib. Then Manindra and Rajib exhortative rant saying 'Mar, Mar' and they attacked Khokan Nama and his wife. He tried to stop them but failed. Then Manindra Nama hit Chinu Rani by iron rod. Rajib Nama struck Khokan Nama by bamboo lathi. Chinu Rani suffered injury and they nursed her by pouring water. Khokan Nama succumbed to the injuries but Chinu Rani survived.

[30] From the evidence of the aforesaid eye witnesses one thing is clear from any pale of doubt that Manindra Nama assaulted Chinu Rani by iron rod and Rajib assaulted Khokan Nama by bamboo lathi. So far as the question of anomalies in the testimonies of the PWs *vis-a-vis* their police statement as agitated by learned defence counsel is concerned, I am of the view that these are minor discrepancies and should not be given much weight age as they do not touch the merit of the evidence of the said PWs as far as they have spoken about the assault on Khokan and Chinu Rani by respectively Rajib and Manindra.

[31] Bereft of minor discrepancies here and there, the evidences of PWs 3,4,15 and 21 also are also found unanimous on the point that at about 10/10.30 PM they heard hue and cry in the house of Khokan Nama and rushed there and found Manindra Nama assaulted Chinu Rani by iron rod and Rajib Nama assaulted Khokan Nama with lathi. The evidence of

the said witnesses up to this extent remains totally unshaken in cross-examination.

[32] As regards the discrepancies between the police statement of the witnesses and their deposition in the trial as pointed out by the learned defence counsel, after going through the evidence in its entirety, I am of the view that these are natural variations in the statement of lay persons and as such do not detract from the core value of the testimonies of the said witnesses and thus do not cut at the root of the case. The witnesses gave their deposition after more than one year of the incident whereas they gave statement to the police shortly after the incident. As such they cannot be expected to repeat their police statement in the court with mathematical precision. Rather, had it been said with such absolute precision, it would have aroused doubt about their veracity. A murderous assault took place and naturally, the witnesses were not in a cool state of mind so as to minutely observe who did what and who said what and more so it was fight between two groups of people i.e. family members of the accused and deceased.

[33] In such a situation the reflex action of a person may not function in tandem with another and therefore, there is bound to be variation in the perception and observation between two persons in such a situation. Here comes the duty of the judge to filter the evidence and separate the grain from the chaff so as to reach the truth. And the truth in this case is that accused Manindra and his son Rajib assaulted Chinu Rani and her husband Khokan and grievously injured Chinu Rani and caused the death of Khokan.

[34] As regards the victim Chinu Rani Namadas, also the evidence of PW-27 Dr. Subhrajyoti Majumder is clear to the effect that there was

one lacerated looking stitch wound on the left parietal region of scalp which was caused by blunt object. Nature of injury was grievous.

[35] In view of the clear evidence of the eye witnesses as discussed above, it stands clearly established that the accused Rajib Nama Das assaulted deceased Khokan Nama Das with lathi in his head and accused Manindra Nama Das assaulted Smt. Chinu Rani Nama Das, wife of Khokan, with crowbar. Due to such assault by the accused persons deceased Khokan died on the next day at G.B.Hospital and Chinu Rani suffered grievous hurt in head. PW-26 Dr. Juthika Debbarma has clearly stated that the cause of death of the deceased Khokan was due to head injury.

[36] As regards victim Chinu Rani PW-27 Dr. S. Majumder has opined that the injury in her head was grievous in nature. The evidence therefore, boils down to the fact that accused Rajib caused the death of deceased Khokan by assaulting him with lathi and accused Manindra caused grievous hurt to Chinu Rani by assaulting her with crowbar.

[37] That brings us to the point whether the offence of murder punishable under Section 302 of IPC has been made out against the accused persons. The incident happened on the backdrop of the ongoing enmity between the parties over the issue of tying the pig by the prosecution party ignoring the objection of the accused party.

[38] It is clear in the evidence that there was a simmering discord between the parties over the issue of tying pigs by the complaining party. The incident was the flash-point of the dispute when the accused party entered the house of the complaining party, made outrageous protest and the violence broke out. There was violence from both sides as there is also

a counter case lodged by the accused party which is pending in this court vide case No. Special 21 of 2015.

[39] This is supported by the evidence of the DWs especially the DW 2 medical officer who has stated about the presence of injuries on the person of the accused person. In this fact situation the element of provocation can well neigh be said to be there. Had the complaining party not tied their pig to the detriment of the accused party, perhaps, such a bloody situation would not have happened. This, therefore, is not a cold blooded murder but the outcome of sudden outrage and spur of the moment.

Exception 4 to Section 300 of the IPC provides that culpable homicide is not murder if it is committed without pre-meditation in a sudden fight, in the heat of passion upon a sudden quarrel and without the offender's having taken advantage or acted in a cruel or unusual manner. Where a mutual conflict develops and there is no reliable and acceptable evidence as to how it started and as to who was the aggressor, the plea of private defence on either side cannot be permitted, but it is a case of sudden fight and conflict and has to be dealt with under exception 4. - AIR 1957 SC 469 – Jumman.

Where there was no premeditation, and in the course of a sudden quarrel on a trivial issue, a young man had given only one blow to the deceased, it was held that Section 300, firstly and thirdly were not attracted. His conviction under Section was altered to Section 304, Part-II as he could be imputed with the knowledge that he was likely to cause an injury which was likely to cause death. - 1983 SCC (Cri) 459 – Jagtar Sing. Where in the heat of an altercation between the deceased on the one hand and the appellant and his comrades on the other the appellant in order to chastise the deceased had seized a jelly and thrust into the chest of the deceased causing instantaneous death to the latter, it was held that as the evidence did not show any intention on the part of the appellant to kill the deceased and since only one blow had been struck by the appellant upon the deceased, his conviction must be altered from one under Section 302 to under Section 304 Part-II. - Hari Ram -1983 SCC (Cri) 159.

[40] As regards the accused Rajib Namodas, in view of the fact as has transpired in the evidence of the PWs and DWs, that there was ongoing enmity and bitter relation between the parties and the incident happened on

the spur of the moment on the issue of tying of pig by the prosecution party to the inconvenience of the accused party and there was not verbal exchange of abuses from both sides at the time of the occurrence, I am of the view that the case would not straightway fall under the category of murder under Section-302 IPC, but would be covered by the exception 4 to Section 300 of the IPC i.e. culpable homicide not amounting to murder under Section 304 Part-II of the IPC which provides that culpable homicide is not murder if it is committed without pre-meditation in a sudden fight, in the heat of passion upon a sudden quarrel and without the offender's having taken advantage or acted in a cruel or unusual manner.

[41] As regards the participation of the accused persons, it has come out clear in the evidence that accused Rajib only gave the fatal blows with lathi to the deceased Khokan. There is no evidence about the accused Manindra to have assaulted the deceased Khokan. As such the charge of murder would only attract the accused Rajib. As regards the accused Manindra, the evidence is that he assaulted Chinu Rani with crowbar and the medical evidence says that the injury of Chinu Rani was grievous in nature. Crowbar is a blunt object. Though it may have a pointed end but the medical evidence does not say the injury of Chinu Rani to be a pointed or piercing injury. Rather, the blow seems to be a flat blow with the round body of the crowbar. As such the act of accused Manindra would constitute the offence under Section-325 so far as he assaulted Chinu Namo Das.

[42] Accused Manindra Das appears an old man of around 70 years and also the full blooded brother of the deceased Khokan. In this fact situation, without there being any strong motive, it is hard to believe that he had the intention to kill his brother, the deceased, who was actually

given the lathi blows by his son Rajib. As such the charge of common intention under Section 34 of IPC cannot be convincingly said to have been brought home against the accused Manindra. Therefore, the charge of Section 325 IPC is held to be established against accused Manindra instead of Section 302/34 of the IPC.

[43] As regards the lady accused persons, though the PWs have said that they were also present and took part in the fight, but there is lack of clarity and corroboration against them. As such I think they should be given the benefit of doubt. In view of the clear and convincing evidence rendered by the PWs as discussed above and the PW being remained unshaken in cross-examination on material particulars, I am of the view that the charge under Section-304 Part-II of the IPC has been proved beyond shadow of doubt against the accused Rajib Namo Das. Further, the charge under Section-325 of the IPC has been proved against the accused Manindra Namodas. Since the accused persons entered the house of the victims with a view to assault them, the charge under Section-448 IPC is also held proved against them.

[44] After giving anxious consideration to the facts and circumstances of the case and the evidence adduced by the prosecution, we find that the prosecution proved all the circumstances and linked them with each other in such a manner that those circumstances lead to only one conclusion i.e. the guilt of accused persons in regard to the alleged offence and after perusal of oral evidence specially the testimonies of the defence witnesses, we find no chance of any doubt that any other miscreants except the accused-persons, and his associates had committed the crime.

[45] It is settled proposition of law that the court is not supposed to give undue importance to omissions, contradictions and discrepancies

which do not go to the heart of the matter, and shake the basic version of the prosecution witness. Thus the court must read the evidence of a witness as a whole, and consider the case in light of the entirety of the circumstances, ignoring the minor discrepancies with respect to trivial matters, which do not affect the core of the case of the prosecution. The said discrepancies as mentioned above should not be taken into consideration, as they cannot form grounds for rejecting the evidence on record as a whole.

[46] Having regard to the evidences on record, it is crystal clear that there is no doubt that the question of sentence is a matter of discretion and such discretion has to be exercised along with accepted judicial lines. To impose adequate punishment according to law is not only the duty of the Court, but it is social obligation clearly enjoined upon it keeping in mind not only the crime but also the criminal. In the case in hand, the convicts proved to have committed the offence as indicated above and as such their plea of innocence cannot have any significance.

[47] In my ultimate analysis, it is crystal clear that there is no reason as to why the continuity of the chain of circumstances and the complaint made against the accused-persons to be disbelieved. All the witnesses supported the entire case of the prosecution with regard to commission of offence by the accused-persons. For the reasons stated above, this Court is of the opinion that there is no infirmity in the findings arrived at by the learned Sessions Judge, Gomati Judicial District, Udaipur, Tripura, in connection with S.T.15 (GT/U) of 2015 while convicting and sentencing the accused-persons. Accordingly, the judgment and order of conviction and sentence as declared by learned Sessions Judge, Gomati Judicial District, Udaipur, Tripura, in connection with S.T.15 (GT/U) of

2015, stands affirmed and upheld. Consequently, the present appeal preferred by the convict-appellants is dismissed. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs forthwith.

JUDGE

A.Ghash

