

GAHC010006082011



**THE GAUHATI HIGH COURT AT GUWAHATI**  
**(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)**

**PRINCIPAL SEAT AT GUWAHATI**

**CRIMINAL APPEAL NO. 91 of 2011**

Shri Tarun Das & Anr.

.....Appellant.

-Versus-

State of Assam,  
Represented by its Public Prosecutor.

.....Respondent.

Advocates for the appellant: Mr S C Biswas

Advocate for the respondent: Mr D Das, Addl. P. P, Assam

**BEFORE**  
**HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

Date of hearing : 08.06.2023

Date of judgment : 04.10.2023

### **JUDGEMENT AND ORDER**

Heard Mr S C Biswas, learned counsel for the appellant and Mr D Das, learned Additional Public Prosecutor for the State of Assam.

2. This appeal is preferred against the Judgment and Order dated 17.03.2011, passed by the learned Additional Sessions Judge (FTC), in connection with Sessions Case No. 79/2009, convicting Tarun Das, under Section 448 of the Indian Penal Code ('IPC', for short) and sentencing him to pay a fine of Rs. 1000/- with default stipulation and under Section 326 IPC and sentencing him to rigorous imprisonment for four years and to pay a fine of Rs. 2000/- with default stipulation. The accused Debashish Das is convicted under Section 448 IPC and is sentenced to pay a fine of Rs. 1000/- with default stipulation and under Section 324 IPC and sentenced to rigorous imprisonment for three years. The period of custodial sentence is set off with the period of detention already undergone by both the accused during investigation and trial.

3. The prosecution case as unfolded from the FIR (Exhibit-1) is that on 03.05.2007, at about 10:00 p.m. Satyajit Das, Tarun das, Debashish Das, Dilip das and Sudhangshu Choudhury armed with dao, bhujali and shubble, criminally trespassed into the house of Joy Kumar Das and dragged him and his two daughters namely Bulti Das and Sumi Das out of their house. Sumi Das somehow managed to escape, but Satyajit Das, Tarun Das and Debashish Das attacked Joy Kumar Das and his daughter Bulti Das with dao, bhujali and shubble, causing grievous injuries. When they raised alarm, Sri Jogesh Das, father of Joy Kumar Das went out of his house and tried to restrain the accused from assaulting the

victims. Subsequently, the injured victims were taken to Kalibari police station with the help of the villagers. Both the injured persons were provided treatment in the hospital, but Joy Kumar Das succumbed to his injuries. Jogesh Kumar Das lodged an FIR with the police at Kalibari Outpost. GD entry was registered and the FIR was forwarded to R K Nagar Police Station and R K Nagar PS Case No. 34 of 2007 was registered under sections 147/148/149/448/326/307 IPC.

4. The Investigating Officer ('IO' in short) who was entrusted with the investigation, embarked upon the investigation and recorded the statements of the witnesses. He visited the place of occurrence ('PO' for short) and prepared a sketch map. Both the injured persons were forwarded to Silchar Medical College and Hospital and their statements were also recorded. As Joy Kumar Das succumbed to his injuries, inquest was held and his body was forwarded for autopsy. After completion of investigation, charge sheet was laid against accused Satyajit Das and Tarun Das under Sections 447/448/326/354/307/302/34 IPC. At the stage of appearance, the accused Satyajit Das was killed and another case was registered against this incident of murder, being R K Nagar PS case No. 8/2008. The order dated 20.07.2009 in connection with GR Case No. 409/2007 reveals that this case against the accused Satyajit Das was abated after his death.

5. On appearance of the accused, this case was committed to the Sessions Judge for trial. At the commencement of trial, a formal charge under Sections 448/326/354/302 IPC was framed and read over and explained to the accused Tarun Das, to which he pleaded not guilty and claimed to be tried. The other accused, Debashish Das, was summoned as per section 319 of the Code of Criminal Procedure ('CrPC', for short) and on his appearance copies were furnished and a formal charge under sections 448/326/302 IPC was framed and read over

and explained to him to which he pleaded not guilty and claimed to be tried.

6. During the pendency of this appeal, the accused Tarun Das passed away on 13.10.2016.

7. To connect the accused to the crime, the prosecution adduced the evidence of 8 witnesses, including the Medical Officer (MO, in short) and the IO, whereas the defense cross examined the witnesses to refute the charges.

8. At present, this appeal is against the accused Debashish Das, who will hereinafter also be referred to as the accused for brevity.

9. The learned counsel for the accused laid stress in his argument that the IO laid the charge sheet against other two accused Satyajit and Tarun, but as the witnesses did not implicate him when their statements under section 161 CrPC was recorded, charge sheet was not laid against Debashish Das. On the basis of fabricated evidence of the witnesses, the prosecution made a request and the District Judge erroneously summoned the accused Debashish Das under section 319 CrPC and finally convicted him.

10. Per contra, the learned Addl. PP laid stress in his argument that although there are minor contradictions in the evidence, this accused cannot be exonerated. A person died due to the act of the accused.

11. On the anvil of these submissions, the question that falls for consideration is that whether the learned trial court erred by convicting the accused in connection with the corresponding case.

12. To decide this case in its proper perspective, the evidence is once more reappraised. Smt Bulti Das is the eyewitness as well as the victim. She stated as PW 1 that on 03.05.2007, a meeting was held regarding land matters between Satyajit Das and Nimai Chand Das. On

that day, the accused Debashish Das along with Satyajit Das and Tarun Das entered into their house. Debashish was carrying a shubble, while the other accused were armed with sharp weapons. Satyajit dragged her father out of the house and Tarun dragged her and her sister out of the house. Tarun severed off her finger, while Debashish struck a blow on her head, with a shubble and she sustained severe injuries on her head and her gaping wound had to be stitched with 18 stitches.

13. PW-1 further deposed that Debashish Das, along with the other accused, Tarun Das assaulted her father causing severe injuries on his head and other parts of his body. She then raised alarm and her grandfather came out of her house. Meanwhile, the villagers also arrived and the accused persons left the place of occurrence ('PO', for short). They were taken to the R K Nagar Hospital and from thereon they were taken to Silchar Medical College and Hospital. While undergoing treatment, her father succumbed to his injuries. Her grandfather lodged the FIR. Her father Joy Kumar Das died after 45 days of the incident.

14. In her cross examination, PW-1 stated that when they raised alarm, Digesh Das, Upendra Namasudra, Baneswar Namasudra, Nimai Chand Das, Buddha Das, Rabindra Das, Rabindra Acharjee, Ananda Acharjee and Jhunu Namasudra came to the PO. Prior to the incident, meeting was held regarding a parcel of land sold orally by her father, Joy Kumar Das to Satyajit Das. The accused Satyajit Das and Tarun Das were also present in the meeting but they did not quarrel with her father. PW-1 admitted that they do not have electricity in their house. PW 1 specifically stated that Satyajit stabbed her father with a dagger. The accused dealt a blow with a dao on her hand which severed off the middle finger of her right hand.

15. The evidence of PW-1 is supported and corroborated by the evidence of PW-2, Sumi

Das, who stated that three and a half years ago, on the fateful night at around 10:00 pm, the accused Satyajit, Tarun and Debashish entered into their house, armed with dangerous weapons. Satyajit had a dagger, Tarun had a dao and Debashish had a Shubble in his hand. Satyajit and Debashish Das took her father Joy Kumar Das out of the room towards a mango tree and Tarun dragged her and her sister Bulti out of the room. She somehow managed to escape from the clutches of Tarun and raise alarm. Her grandfather then came out. At that time, Debasish hit her father with the shubble and Tarun dealt a blow with his dao on his sister. Satyajit and Tarun also attacked her father with their weapons. Meanwhile, her grandfather Jogesh Chandra Das and the other villagers reached the PO and gathered in their house. Her father and sister were taken to R K Nagar hospital, but as their injuries were severe in nature, they were taken to Silchar Medical College and Hospital. During his treatment at SMCH, her father passed away. Bulti underwent the amputation of a finger on her right hand.

16. PW-2 further stated that there were around five or seven bystanders who did not come to their rescue. The incident took place on a moonlit night, but she did not notice who came to their rescue on hearing her shrieks. Likewise PW-1, she also admitted that prior to the incident, a meeting was held regarding sale of land by her father. PW-2 stated that she watched the incident from under a leechi tree which was 15 to 16 cubits away from the place of occurrence.

17. An independent witness, Sri Robindra Acharjee stated as PW-3 that the incident occurred about three and a half years ago at about 10:00 p.m. On hearing a commotion emanating from Joy Kumar Das's house, he went there and found Joy Kumar Das and Bulti in injured condition and he came to know that Tarun and Satyajit had assaulted them. He wrote

the FIR as narrated by Jogesh Chandra Das. He proved his signature on the FIR as Exhibit-1(1) and his endorsement of the thumb impression of Joy Chandra Das as Exhibit-1(2). PW-3 also deposed that before the incident, at about 8/9 p.m, a meeting was held in the house of Tarun Das and he was present in the meeting and the incident took place after the meeting.

18. PW 3 was declared a hostile witness and he denied the suggestion of the prosecution that he stated before the police that on 03.05.2007, at about 10:00 p.m,. Debashish, Sudhanshu and Dilip dragged Joy Kumar Das and Bulti Das out of their house and assaulted them with shubble, dagger and dao. On being cross examined by the defence, PW-3 stated that no untoward incident occurred during the meeting and he never stated before anyone that Debashish was involved in the incident. He also admitted in his cross examination that accused Satyajit Das (accused) was killed and his son Raju Acharjee is an accused in the case of homicidal death of Satyajit Das.

19. Another witness is Sri Rabindra Das, who deposed as PW-4 that about three and a half years ago, one night at around 9:30/10:00 pm, he heard a commotion and he went to Joy Kumar Das's house and saw Joy Kumar and Bulti in injured condition. They forwarded both the injured persons to the hospital. Later, he heard that Satyajit, Tarun, Debasis, Dilip and Sudhanshu assaulted Joy Kumar Das and Bulti Das. During his treatment, Joy Kumar Das passed away at SMCH. In his cross examination, PW-4 also stated that he is an accused in the case of homicidal death of Satyajit.

20. It can be deduced that although PW-3 and PW-4 are independent witnesses, they may also be partisan witnesses. PW-3's son and PW-4 are accused in a case relating to murder of the co accused of Devashish Das, i.e., Satyajit Das.

21. The evidence of PW-1 clearly reveals that the fatal blow was dealt by Satyajit Das who thrust the dagger into Joy Kumar Das. PW-1 was the eyewitness and she also witnessed the entire incident. She stated that Debashish assaulted her father, but he was armed with a shubble. He (Debashish) has also not been held guilty of offence under Section 302 IPC.

22. This is a case where the present accused Debashish Das was charged with offence under Sections 448/354/302 IPC. Section 326 and 302 IPC are heinous offences and it has to be proved beyond a reasonable doubt that the accused committed the offence under section 302/ 326 IPC. The question that falls for consideration is that whether the accused intentionally caused grievous hurt on the deceased and whether the accused caused the murder of the deceased by intentionally causing such injuries, which are sufficient in the ordinary course of nature to cause death. The evidence of PW-1 and PW-2 does not specifically implicate that the accused voluntarily caused grievous hurt upon the victim with sharp weapon or the accused dealt a fatal blow on the deceased.

23. Dr BC Roy deposed as PW-6 that on 19.06.2007, he performed postmortem examination on the body of Joy Kumar Das, aged 52 years, and found as follows :

*“.....(1) One recent healed regular linear scar of wound 4 cm x 0.2 cm obliquely present on left side of frontal region of scalp,*

*(2) same characteristics scar of wound present on anterior part of frontal region extending obliquely towards left parietal region on vertex over scalp 12 cm x 0.4 cm.*

*(3) same characteristics scar of wound, 6 cm x 0.3 cm obliquely present on anterior right frontal region of scalp. Parts of skull and scalp depressed at sites.*

24. According to PW-6, the cause of death was result of head injury.

25. The injuries were antemortem and clogged, caused by blunt force impact and sharp cutting weapon and homicidal in nature. Time since death was 12-24 hours. He proved the PM report as Ext-3 and his signatures on the PM report as Ext- 3(1) and Ext-3 (2).

26. Dr Bidhan Chandra Biswas, who initially provided treatment to the victims deposed as PW-6 that on 03.05.2007, while he was serving as Senior Medical And Health Officer at R K Nagar PHC, he examined Joy Kumar Das and Bulti Das on police requisition. On examination of Joy Kumar Das he found the following injuries:

- 1) 7.5 cm long cut injury to mid frontal scalp, cutting skin subcutaneous tissues and muscles,*
- 2) Cut injury to skin, muscles of right shoulder girdle,*
- 3) 14 cm long cut injury to left parietal scalp longitudely cutting all layers of the scalp and also the skull bone.*

27. PW-7 opined that injury No. 3, i.e. the 14 centimeter long cut injury to the left parietal scalp was was grievous in nature and the other injuries were simple in nature. Considering the nature of the injury which was life threatening in nature, the patient was referred to Silchar Medical College and Hospital. He proved the injury report of Joy Kumar Das as Exhibit-4 and his signature as Exhibit 4 (1).

28. On examination of Bulti Das, PW-7 found the following injuries-

- 1) Amputation cut injury to mid right middle finger (complete separation) and right ring finger (90% amputation),*
- 2) Cut injury to posterior scalp 6 cm long, deep up to skull with cracked cut of skull*

*bone 4 cm long."*

29. According to PW-7, the injuries were fresh, caused by sharp object and were grievous in nature. He proved the medico legal report of Bulti Das as Exhibit 5 and Exhibit 5 (1) as his signature. According to PW -7, the injury No. 3 of Joy Kumar Das could be caused by any weapon having more than 14 centimeters sharp area.

30. In view of the medico-legal report and the opinion of the Medical Officer, PW-7, the present accused Debashish Das gets the benefit of doubt. The witnesses PW-1 and PW-2 have mentioned that Debashish Das was carrying a shubble, which does not have more than 14 centimeters sharp area. The other discrepancy is that the weapons of offence were not proved in the court or identified by the witnesses. The opinion of the medical officers PW-6 and PW-7 were also not taken by the prosecution by producing the weapons of offence to be identified by the medical officers to ascertain if such weapons could cause the injuries which were grievous in nature and which resulted in the death of the deceased.

31. PW-5, Sri Mrinal Kanti Roy stated that the inquest of the deceased was conducted by Executive Magistrate, Sri M K Debnath at SMCH and he was present at that time. He proved his signature on the inquest as Exhibit- 2 (2)

32. The IO, Moharam Ali Loskar testified as PW-8 that on 03.05.2007, while he was serving as I/c of Kalibari Outpost, he received an oral information and he registered GD entry number No. 44, dated 03.05.2007 and forwarded the injured persons Joy Kumar Das and Bulti Das to R K Nagar PHC. On 04.05.2007, on receipt of written ejahar (FIR) from Jogesh Chandra Das he forwarded the ejahar to R K Nagar PS for registration of this case. He visited the place of occurrence and prepared the sketch map vide Exhibit-6. He recorded the statements of the

witnesses and also the statement of the injured Joy Kumar Das. He arrested the accused and seized one iron dagger. After completion of investigation, he submitted the charge sheet against the accused. He proved the charge sheet as Exhibit-8.

33. PW-8 further deposed in his cross examination that he embarked upon the investigation on the basis of the GD Entry No. 44 dated 03.05.2007.

34. From the cross-examination of PW-1 and the cross-examination of the IO, PW-8, it is clear that PW-1 did not mention in her initial statement that Debashish Das dealt a blow on her head with a shubble, causing the grievous injuries on her head which resulted in a gaping wound requiring 18 stitches.

35. The prosecution also failed to adduce the evidence of the other two brothers of Bulti Das, who according to her was present at home at the time of incident. The major contradiction that could be elicited through the cross examination of Bulti Das, PW-1, vis-a-vis of cross examination of I/O, PW-8 is that PW-1 did not mention in her earlier statement before the I/O that Debasish Das attacked her with a 'shubble' and he also assaulted her father. The I/O affirmed in his cross-examination that the victim Bulti Das, PW-1 did not mention in her initial statement that Debasish Das attacked her with a shubble and also assaulted her father. This extends the benefit of doubt to the accused Debasish Das. No shubble was seized in connection with this case. PW-1 categorically mentioned that the accused Satyajit thrust one dragger into her father. The other discrepancies in the evidence is that the statement of the deceased Joy Kumar Das was recorded under Section 161 Cr.P.C but this statement was not proved by the prosecution or identified by the I/O. The prosecution was thus conducted in a very apathetic manner.

36. The IO, PW-9 deposed that he recorded the statement of the injured Joy Kumar Das under Section 161 CrPC. This statement would have proved as dying declaration, but the prosecution failed to exhibit the statement of the deceased Joy Kumar Das under Section 32 of the Evidence Act. Earlier, when the IO submitted charge sheet, the present accused Debashish Das was not chargesheeted. Later, at the stage of trial, after recording the evidence of the witnesses, summonses were issued to the accused under Section 319 CrPC. It could be culled out from the evidence that as the witnesses have not incriminated the present accused Debashish Das, charge sheet was not laid against him, but when the witnesses deposed in the Court, they implicated that the present accused was complicit. On vigorous cross examination of the witnesses, the grain has to be separated from the chaff. The eyewitness, Bulti Das, PW-1 did not mention in her earlier statement that Debashish attacked her with a Shubble and he assaulted her father. It cannot be ignored that no Shubble was seized in connection with this case during investigation. Sumi Das, PW-2 deposed that at the time of the incident, Satyajit and Debashish (accused) took away her father towards a mango tree, while Tarun dragged Bulti (PW-1) out of the room. PW-2 also did not mention in her earlier statement that Debashish Das assaulted her father with a shubble, but she stated in her initial statement that Debashish was carrying a shubble and the accused assaulted her father. This has been affirmed by the IO (PW-8) when his cross examination was recorded. PW-8 also affirmed through his cross examination that Rabindra Das, PW-4 did not mention under Section 161 CrPC that he heard that Debashish assaulted Bullti and Joy Kumar Das. The presence of Debashish Das at the place of occurrence has not been rebutted. It is also in the evidence that Debashish was carrying a Shubble. It has also been held in my foregoing discussions that the fatal injury could not have been caused by a

Shubble. The fatal injury was caused by a weapon like dao. PW-1 was present with her father at the time of the incident and she witnessed Satyajit stabbing her father with a dagger. PW-1's right hand middle finger was severed off with a dao, but Debashish was not holding a dao.

37. PW-3 did not at all implicate that Debashish Das was complicit. The evidence of PW-4, incriminating the accused Debashish Das has been contradicted and controverted through his cross examination vis-a-vis the cross examination of IO, PW-8. It has also to be borne in mind that PW-3's son and PW-4 are accused in a case of homicide of the co-accused of Debashish Das, i.e., the accused, Late Satyajit Das. PW-5's evidence is not noteworthy. The learned trial Court has held that-

*“20. From the evidence of PW1 and PW2, it has revealed that all the 3 (three) accused persons namely Satyajit Das, Tarun Das and Debasish Das entered into the house of Jay Kumar Das and dragged Jay Kumar Das and Bulti Das out of the house. Though PW I & 2 have been fully cross-examined but on this point, the defence has failed to impeach their evidence. So both the accused persons are found guilty u/s. 448 IPC. Though in the present case, accused Tarun Das has been charged with section 354 IPC for outraging the modesty of Bulti Das and Soma Das but this fact has not been proved in the case.*

*21. From the above discussions, I find accused Tarun Das guilty u/s. 448/326 IPC only and accused Debasish Das guilty w/s. 448/324 4PC only. However as the materials available on record do not prove the offence u/s. 354/302 IPC against Tarun Das and section 326/302 IPC against Debasish Das so they are acquitted from the said charges.*

*22. In view of the above accused Tarun Das is convicted.u/s. 448/326 IPC and accused Debasish Das is convicted u/s. 448/324 IPC."*

38. Reverting back to this case, it is held that PW-1 and PW-2 are eyewitnesses. The presence of Debashish Das with a shubble cannot be ruled out. The witnesses were not cross examined on the point of the presence of Debashish Das in the place of occurrence and the entry of Debashish Das into their house and thus, the presence of Debashish Das with a shubble is not disputed. The learned trial court spelt out sound reasonings while convicting the accused Debashish Das under Sections 448/ 324 IPC and acquitting him from the charges under Sections 326/302 IPC. I record my concurrence to the decision of the learned trial Court upholding the decision that the prosecution could prove beyond reasonable doubt that the accused Debashish Das has committed the offence under Sections 448/324 IPC. The evidence of the witnesses clearly implicates that he went into the house of Joy Kumar Das armed with a shubble and he brought Joy Kumar Das, out of their house and assaulted Joy Kumar Das with his shubble. The grievous injuries were, however, not caused by Debashish Das. Thus, the prosecution could prove that Debashish Das committed criminal trespass and voluntarily caused hurt on Joy Kumar Das with his shubble. A shubble is a spear like weapon, but its sharp end is not pointed. However, the period of imprisonment is scaled down to the period of detention already undergone by the accused Debashish Das during investigation or trial.

39. The conviction of accused under Sections 448/324 IPC is upheld. The sentence of fine under Section 448 IPC is upheld. The sentence of imprisonment under Section 324 IPC is scaled down to the period already undergone by the accused. The accused was already in custody for 90 days. The accused is sentenced to a period of three months of Simple

Imprisonment under Section 324 IPC. The period of detention of three months during investigation and trial is set off with the custodial sentence.

40. Send back the LCR.

**JUDGE**

**Comparing Assistant**