

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. A(J) No.06 of 2023

Shri Shyamal Nath @ Shyamal Debnath

S/o: Shri Krishna Charan Nath
Of Vill. Rowa Chamtilla, P.S.: - Panisagar,
District:- North Tripura.

..... Appellant(s).

Versus

The State of Tripura

.....Respondent(s).

For Appellant(s)	:	Mr. S. Sarkar, Senior Advocate (Ld. Legal Aid Counsel).
	:	Ms. V. Poddar, Advocate.
For Respondent(s)	:	Mr. Raju Datta, P.P.
Date of Hearing	:	02.05.2024
Date of Judgment	:	04.07.2024
Whether fit for reporting	:	No

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HON'BLE MR. JUSTICE ARINDAM LODH

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

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S. Datta Purkayastha, J.

The appeal arises from the judgment and sentence dated 12.02.2020 passed by Ld. Sessions Judge, North Tripura, Dharmanagar in S.T. (Type-1) 02 of 2019 whereby the appellant was convicted under Section 302 of IPC and was sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/- and in default of payment of fine, to suffer further rigorous imprisonment for 6(six) months.

[2] One Md. Katan Ali (PW-1) lodged the written "Ejahaar" on 21.08.2018 at 11:15 hours alleging inter alia, that on that day at about 7:00 A.M. when his father Abdul Kadir (deceased) was

going to a nearby shop, the appellant Shyamal Debnath killed him by causing 'dao' blows in front of his house. Getting the information from neighbouring people, he went there and found the dead body of his father lying on the ground. It is also stated that the mother of the appellant and his elder brother Kripesh Nath (PW-2 and PW-8 respectively) informed them that the appellant after causing death of the deceased fled away from the spot. The police registered the case as Panisagar P.S. Case No.2018 PNS 040 under Section 302 of IPC and SI Gurupada Debnath (PW-15) investigated the case and finally submitted the charge sheet under Section 302 of IPC against the appellant.

[3] Ld. Trial Court framed the charge under Section 302 of IPC against the appellant who denied the charge and thereafter, prosecution examined total 19 witnesses.

[4] Mr. S. Sarkar, learned senior counsel argued that prosecution case rested mainly on the evidence of the mother of the appellant who was produced as an eye witness by the prosecution, but she was not a trustworthy witness, for, according to evidence of some witnesses they learnt the incident from the mother of the appellant who had stated that her son had committed murder of the deceased, but when the information was given to the police first by the co-villager, no such name of appellant was disclosed to the police at the first instance and according to Mr. Sarkar, learned Sr. Counsel, a strong suspicion, therefore, existed in this respect.

[5] Mr. Sarkar, learned Sr. Counsel also argued that some of the witnesses had stated about one incident of previous day alleging that the appellant gave threat to the deceased but no intimation regarding said threat was given to the police. Mr. Sarkar, learned Sr. Counsel also continued his argument submitting that motive of the crime was also not established in this case and the prosecution witnesses also did not corroborate on material points with each other, rendering their testimonies untrustworthy.

[6] Mr. Sarkar, learned Sr. Counsel further argued that recovery of weapon was doubtful as it was found in a Lunga surrounded by bushes which was one kilometre away from the place of occurrence, but Ld. Trial Court lost sight of the said fact. According to Mr. Sarkar, learned Sr. Counsel, the prosecution could not prove the circumstances to form a complete chain for holding the appellant guilty of the offence. The last submission as made by Mr. Sarkar, learned Sr. Counsel was that in case, the convictions and sentence are upheld by this Court, at least some observations may be given, so that the appellant is released from jail after completion of 14 years of his sentence.

[7] Mr. Raju Datta, learned P.P., on the other hand, with all emphasis submitted that the mother of the appellant-convict and his brother i.e. PW-2 and PW-8 were the key witnesses of the incident who categorically implicated the appellant in commission of murder of the deceased and there was no ground to disbelieve

them. According to him, other relevant witnesses such as PW-4, PW-5, PW-6, PW-9, PW-10 and PW-12 were also very reliable witnesses who supported the prosecution version and there was no reason to disbelieve them. Next point, Mr. Datta, learned P.P. argued, was that the scientific officer while examining the weapon of offence found blood of the deceased in the said weapon ('dao') which sufficiently implicated the appellant in commission of alleged crime beyond all reasonable shadow of doubt. Therefore, according to learned P.P., Ld. Trial Court was completely justified in convicting and sentencing the appellant under Section 302 of IPC.

[8] We have given our thoughtful consideration to the submission of learned counsel of both sides and also gone through the record thoroughly. The key witness of the incident is the mother of the appellant Smt. Sribashini Nath (PW-2) who categorically stated that about 6/7 months back on 4th of Bhadra at about 7:00 / 7:30 A.M. in the morning she was in her home and found her son Shyamal Nath was talking with the deceased in front of their house and all on a sudden, Shyamal inflicted 'dao' blows on the deceased, as a result of which he fell down with grievous injuries on the ground and died on the spot. She, thereafter, raised alarm and started crying. She also identified the appellant in the court. The Judicial Magistrate recorded her statement on production by police before him. She could not be discredited in her cross-examination by the defence.

[9] Shri Kripesh Nath (PW-8) the brother of the appellant also in similar tune stated that on that day, hearing alarm raised by his mother, he came out from the house and found his brother Shyamal Nath was going towards western side of their house with a 'dao' in his hand and he inflicted 'dao' blows on the deceased in front of their house. In his cross-examination, he admitted that he did not see his brother to inflict such 'dao' blow. However, his other part of evidence that he found the appellant running with a 'dao' in his hand just after the incident could not be shaken by the defence.

[10] The son of the deceased namely Md. Katan Ali (PW-1), the informant of the case, stated that on 21.08.2018 hearing alarm from the western side of their house he rushed to the place and found his father was lying in injured condition nearby the house of Krishna Charan Nath (father of the appellant) and the mother and brother of appellant had reported him that the appellant caused hurt to his father with a sharp weapon causing severe injuries on him. According to him, after a while the police came and prepared inquest report and shifted the dead body to the hospital and on the same date, he lodged the FIR at Panisagar PS. He was a witness of inquest. In his cross-examination, he stated that probably within 10 to 15 minutes after his father went out of the house, the incident occurred and the police came to the spot after half an hour of the incident. His evidence that from mother and brother of the appellant, he came to know about the incident was found absent in his previous statement recorded

under Section 161 Cr.PC. Anyway, he is not an eye witness of this case.

[11] Sri Swapan Debnath(PW-4) deposed that getting the information from the villagers that one person was murdered in their village nearby the house of the appellant, he went there and found the dead body of Abdul Kadir lying there. According him, the mother of the appellant was shouting with cry that her son Shyamal Nath had murdered Abdul Kadir and he also found cut injury on the neck and other portion of the body of the deceased. He further stated that the mother of the appellant had told him and other persons who gathered there that Shyamal Nath fled away with a 'dao' by which he committed murder and thereafter, the police officials with the help of villagers including himself searched Shyamal Nath and finally found him in the jungle nearby his (PW-4) house along with 'dao' in his hand and thereafter, police seized said 'dao' and arrested him. Similar has been the version of Anil Nath (PW-5) another co-villager. None of them could substantially be discredited by defence in their cross-examination. The Investigating Officer (PW-15) in his evidence also corroborated with above said two witnesses that from the statement of the mother of the appellant it was found that the appellant after inflicting 'dao' blows on the deceased ran away and thereafter he with the help of the local people made search of the appellant and found him with 'dao' in his hand stained with blood and accordingly, he arrested the appellant and seized the 'dao' from his possession in presence of witnesses. Except some denials,

no cross-examination was done to the Investigating Officer on that point. The seizure list Exbt.5/2 dated 21.08.2018 regarding seizure of said 'dao' shows that said 'dao' was seized from a place called Chamtilla in Rowa area in a lunga surrounded by jungle behind the house of one Swapan Debnath (PW-4) and it is also specifically reflected in the said seizure list that said 'dao' was recovered from the present appellant. Therefore, above said fact of fleeing away by the appellant and recovery of blood stained 'dao' was fully established by the evidence of PW-4, PW-5 and PW-15.

[12] Another son of the deceased namely, Salam Uddin (PW-12) stated in his evidence that hearing information from his brother he went to the spot and found the dead body of his father lying in front of the house of the appellant with grievous injuries and there, the mother of the appellant reported to them crying that the appellant had murdered his father. He also stated that on the previous evening, his father had reported to them that on that day while he was going for tethering his cattle, the appellant abused him to teach him lesson as their goats destroyed his vegetable garden and Moin Uddin (PW-9) and Nirab Shil (PW-6) also witnessed the same. Though his such evidence was not found in his previous statement recorded under Section 161 of Cr.P.C., but both Nirab Shil (PW-6) and Moin Uddin (PW-9) stated in their evidence said fact that when they were working in the garden of one Siraj Uddin, the deceased was passing thereby and meanwhile the appellant was found abusing the deceased alleging about destruction of his vegetables by the goats of the deceased and at

that time having armed with one lathi the appellant had also warned him that he would teach him a lesson. They could also not be discredited in their said portion of evidences.

[13] Head Constable Keshab Deb (PW-3) and Sri Mintu Ranjan Paul (PW-18) deposed that in their presence the Investigating Officer seized one gauged cloth in front of the house of the appellant which was stained with blood and they accordingly signed in the seizure list. PW-15 (Investigating Officer) stated that he had seized blood sample of deceased from the spot side Exbt.4/1. According to SI Samir Kanti Das (PW-14), on the said date of incident he also accompanied the OC of the police station and Investigating Officer to the spot and as per instruction of the OC of the police station he prepared the inquest report (Exbt.1/2), the dead body challan (Exbt.7) and also seized wearing apparels of the deceased at Panisagar CHC morgue complex in presence of witnesses under seizure list dated 21.08.2018 (Exbt.8). According to the Investigating Officer (PW-15), on 28.08.2018, he sent the blood sample of the deceased and the wearing apparels and the seized 'dao' to the State Forensic Science Laboratory (Narsingar) for expert opinion and he received the report of the forensic lab on 10.10.2018. The said report of forensic lab (Exbt.13) and evidence of Dr. Shabyasachi Nath (PW-17), Scientific Officer of the forensic laboratory show that blood stain of human origin was detected in all the said Exbts. marked as 'A' 'B' 'C' 'D' 'E' and 'F' and the blood group "A". Therefore, from such evidence, it is also proved that the blood which was found on the 'dao' while arresting the appellant was similar to the blood group of the deceased which

further adds the chain link to the commission of crime by the appellant.

[14] Dr. Sandip Deb (PW-19) who did the autopsy on the corpse of the deceased stated that he found a sharp cut injury measuring about 20 x 10 x 6 cms. over right cheek and right side of neck from 2 cms. lateral to right angle of mouth upto medial border of right sternocleidomastoid muscle lying obliquely cutting through great vessels, nerves, muscles and all the vital structures of neck and cut injury involving tips of index, middle and ring finger of right hand. According to the said autopsy surgeon, the injuries were fresh in nature and time since death was 6 hours and finally, he opined that cause of death was due to severe hemorrhage as a result to damage of vital structure, vessels, nerves around the neck which was homicidal in nature.

[15] All the above said evidences as discussed above sufficiently establish that the appellant was responsible for the murder of the deceased and therefore, Ld. Trial Court was justified in convicting and sentencing the appellant under Section 302 of IPC which does not call for any interference.

[16] So far the submission of Mr. Sarkar, learned Sr. Counsel regarding suffering of maximum sentence for 14 years in case of life imprisonment is concerned, the power of remission or commutation are the prerogative of the appropriate Government in view of the provision of Section 432, 433 and 433-A of the CrPC and this Court is not inclined to make any comment or observation

in this respect by influencing or abridging the exercise of such power by the appropriate Government. It will always be opened to such appropriate Government to consider the matter of such remission or commutation of sentence in accordance with law.

In view of discussion above the appeal is found to be devoid of merit and accordingly the same is dismissed.

Return the LCRs with a copy of this judgment.

Interim application(s), if any, also stands disposed of.

(S. DATTA PURKAYASTHA, J)

(ARINDAM LODH, J)



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