

**HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A**

Crl. A(J) No. 09 of 2023

1. Sri Tashil Debbarma, son of Sri Satish Debbarma @ Santosh of Kamalghat, Bazar Mura, P.S. Lefunga, District: West Tripura

.....Appellant

-VERSUS-

The State of Tripura.

.....Respondent.

**B_E_F_O_R_E
HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

For Appellant(s)	:	Ms. R. Purkayastha, Advocate.
For Respondent(s)	:	Mr. S. Ghosh, Addl. P.P.
Date of hearing & delivery of judgment and order	:	17.01.2024
Whether fit for reporting	:	YES/NO

JUDGMENT & ORDER [ORAL]

[T. Amarnath Goud, J]

Heard Ms. R. Purkayastha, learned counsel appearing for the appellant also heard Mr. S. Ghosh, learned Addl. P.P. appearing for the respondent-State.

[2] The present appeal has been filed under Section-374 of Cr. P.C. against the impugned judgment of conviction and sentence dated 31.01.2022 passed by the learned Additional Sessions Judge, Court No.5, West Tripura, Agartala in connection with case No. S.T.(T-1) 77 of 2019 whereby and whereunder, the appellant has been convicted under Sections-302/324/448 of IPC and has been sentenced to suffer RI for life under Section-302 of IPC and to pay a fine of Rs.10,000/- in default to suffer SI for six months and to suffer further RI for 6 months and a fine of Rs.500/- under Section-448 of IPC in default of payment of fine to suffer SI for two months and to suffer RI for one year and a fine of Rs.2000/-

under Section-324 of IPC in default to suffer SI for four months. All the sentences shall run concurrently.

[3] The facts which set the criminal law in motion, in short, are that, on 17.12.2018 at about 4/4.30 am Sri Bishal Debbarma, the younger brother of informant Sri Ajit Debbarma, in front of his residential house by raising alarm told that their neighbour Tashil Debbarma killed his mother Subhalaxmi Debbarma and immediately he came out from his house and proceeded towards the room of his mother but accused having Axe on his hand gave a blow towards him but informant save himself by his hand and when informant went in front of the house of his mother he heard the sound of giving blow but, he could identify the accused Tashil Debbarma due to the electric light of house and corridor of the house of his mother and in such situation informant to save himself started to flee from the spot but accused Tehsil Debbarma chased him to kill him somehow he saved himself by concealing in jungle.

[4] Thereafter, informant came out from jungle and took shelter in the house of Smti. Nanda Rani Debbarma and after some time informant went to his house and saw that neighboring people came to his house and informant went to the house of his mother and saw that bleeding dead body of his mother was lying on the bed and informant heard from the people that accused Tashil Debbarma while leaving also attacked their neighbour Biplab Debbarma and Biplab Debbarma sustained bleeding injury on his hand.

[5] On the basis of FIR, PS case was registered against the accused and on completion of the investigation and finding sufficient materials charge sheet is filed against the accused for offence punishable under section 457/324/302 of IPC.

[6] On receipt of charge sheet, the Committal Court took cognizance of the offences and finding the offence exclusively triable by the Sessions Court, committed the record to the Court of the learned Sessions Judge, West Tripura, Agartala. Learned Sessions Judge, West

Tripura, Agartala received the record and transferred it to this Court for disposal in accordance to law. Upon hearing of both sides, charge was framed by this court against accused person for offence under section 324/455/302 of IPC and was read over and explained to accused person but he denied to plead not guilty and claimed to be tried.

[7] During trial, prosecution examined as many as 20 (twenty) witnesses. After closure of prosecution evidence, accused person was examined under section 313 Cr.P.C and his answers and replies were recorded. Accused person declined to adduce evidence. After hearing the parties and having gone through the material evidence on record, the learned Court below has observed as under:

“In view of the above, I am of the considered opinion that prosecution is able to prove the offence punishable under section 302/324/448 of IPC against the accused Tashil Debbarma.

Accordingly accused Sri Tashil Debbarma is convicted for offence punishable under section 302/324/448 of IPC.”

[8] Being aggrieved by and dissatisfied with the observations by the learned Court below, the present appeal has been preferred by the appeal before this Court for redress.

[9] Ms. R. Purkayastha, learned counsel appearing for the appellant has submitted that the findings of the learned Court below is perverse, illegal, unjustified, unreasonable, arbitrary, unwarranted in law and facts and as such not tenable in the eye of law and liable to be set-aside. The learned Court below relying upon the improved version of the prosecution witnesses convicted the appellant. As such, the order of conviction is not tenable and to be set aside.

[10] The learned Court below by way of non-reading and improper appreciation of evidence on record and the facts and circumstances of the case arrived at absolutely illegal, wrong and unwarranted findings causing grave miscarriage of justice to the

appellant. The learned Court below held the convict appellant to be guilty of alleged offences on the basis of no evidence inasmuch as, the evidence on record does not constitute the alleged offence and in no case implicated the convict appellant in the commission of alleged offence.

[11] It has been further submitted that the learned Court below ought to have held that the alleged presence of the convict-appellant at the alleged place of occurrence, alleged participation of the appellant in the commission of the alleged offence are absolutely doubtful and on the basis of such evidence the appellant could not be legally convicted for the alleged offence. The learned Court below relied on the improved versions of all the P.Ws illegally and on the basis of such improved versions, convicted and sentenced the appellant only on surmise and conjecture. It has been contended that there are many contradictions in the evidence of PWs and, therefore, it cannot be said that accused had intention to kill deceased Subhalaxmi Debbarma.

[12] On the other hand, Mr. Ghosh, learned Addl. P.P. appearing for the respondent-State has submitted that from the evidence of PWs specially from the evidence of eye witnesses, it is clearly proved that accused committed murder of deceased Subhalaxmi Debbarma by an Axe with an intention to kill her. It is further submitted that accused during his examination under Section-313 of Cr.P.C admitted and stated that he killed Subhalaxmi Debbarma and the said statement and admission of accused can be relied on. Thus it is submitted that accused is liable to be convicted for murder.

[13] Mr. S. Ghosh, learned Addl. P.P. in support of his case has relied on a decision of the Apex Court in *Tulshiram Sahadu Suryawanshi and Another v. State of Maharashtra*, reported in (2012) 10 SCC 373, wherein, the Court held thus:

“It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the Court exercises a process of reasoning and reaches a logical conclusion as

the most probable position. The above position is strengthened in view of Section-114 of the Evidence Act, 1872. It empowers the Court to presume the existence of any fact which it thinks likely to have happened. In that process, the Courts shall have regard to the common course of natural events, human conduct etc in addition to the facts of the case. In these circumstances, the principles embodied in Section-106 of the Evidence Act can also be utilized. We make it clear that this Section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the Court to draw a different inference. It is useful to quote the following observation in *State of West Bengal vs. Mir Mohammed Omar*, (2000) 8 SCC 382:

“38. Vivian Bose, J., had observed that Section 106 of the Evidence Act is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. In *Shambhu Nath Mehra v. State of Ajmer* the learned Judge has stated the legal principle thus:

“This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are ‘especially’ within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word ‘especially’ stresses that. It means facts that are pre-eminently or exceptionally within his knowledge.”

[14] Having heard the learned counsel appearing for the parties and the observations made by the learned Court below, for approaching towards definite conclusion, let us reopen the evidence once again.

[15] In this context, this Court finds, PW-11 Sri Bishal Debbarma in his evidence deposed that on 17.12.2018 in the early morning around 4/4.30 am he along with his wife and children were sleeping in their dwelling room and their mother Subhalaxmi Debbarma was also sleeping in their adjacent room. At that time, accused Tashil Debbarma was calling his mother and his mother asked him as to why accused is calling and told him to go away and come later. On the asking of his mother, all the lights were put on and immediately thereafter, the accused entered the dwelling room of his mother by breaking the back door and started making blows with an axe at his hand. Thereafter, he rushed in rescue of his mother when accused also started making blows to him but, somehow he

managed to save himself and ran away and he raised alarm calling his brother Ajit. When his brother Ajit came out and went in the Varanda of the dwelling room of his mother accused also attempted to assault his brother and his brother also managed to save himself and ran away; accused Tashil also ran away following his brother. He thereafter, left the house out of fear along with his wife and child and thereafter keeping his wife and child in one of their neighboring house. He rushed to the police station and on his information police went to their house and Ajit narrated the incident to the police. Police also asked him about the incident. Police thereafter shifted their mother to Mohanpur Hospital. Due to the assault, his mother died at the spot. PW-11 identified accused Tashil Debbarma.

[16] PW-8 Sri Ajit Debbarma @ Ukil corroborated the evidence of PW-8 by deposing that on 17.12.2018 in the early morning around 4/4.30 am he was sleeping in his dwelling hut and at that time his brother Bishal Debbarma called him and informed that accused Tashil Debbarma was assaulting his mother and immediately he woke up and rushed out of his room and found accused Tashil Debbarma was assaulting his mother with an axe just near the door of her dwelling room and when he tried to save his mother, the accused attempted to assault him by the axe and somehow he managed to save himself. Out of fear he ran away and took shelter in a nearby jungle. The accused Tashil Debbarma followed him and searched him but, could not find him out and after half an hour when he returned back to his house he found their mother was lying in her bed with severe bleeding injury on the various parts of her body and she was dead then and he also heard that one of their neighbour namely, Biplab Debbarma tried to detain the accused Tashil at that time accused also assaulted Biplab by axe and on being informed by his younger brother police came to their house and seized the axe which was used by the accused in the house of Biplab Debbarma. In his presence prepared the seizure list and he put his signature in the seizure list as witness which is marked as Exhibit 8/1.

[17] PW-8 also deposed that he also laid oral complaint to the police and subsequently, the oral complaint was reduced into writing by the police and after admitting the contents to have been correctly written he put his signature in the written complaint and also identified his signature at the bottom of the complaint which is marked as Ext.7/2. Surathal report over the dead body of his deceased mother was also prepared by the police in his presence and he also put his signature in the surathal report as witness and signature of the witness in the surathal report is also marked as Exhibit 9/1. PW-8 identified accused Tashil Debbarma and further deposed that police has seized the axe from the house of Biplab Debbarma which was used by the accused Tashil Debbarma in his presence and a seizure list was prepared on 17.12.2018 wherein he also put his signature and PW-8 identified the weapon of offence(Axe) marked as Ext.MO.1.

[18] The above mentioned of PW-8 is corroborated by FIR marked as Ext.7. From FIR, this Court finds, informant stated in the FIR that on 17.12.2018 at about 4/4.30 am Sri Bishal Debbarma, his younger brother in front of his residential house by raising alarm told that their neighbour Tashil Debbarma killed his mother Subhalaxmi Debbarma and immediately he came out from his house and proceeded towards the room of his mother. But, the accused having Axe on his hand gave blow towards him somehow he saved himself by his hand and when he went in front of the house of his mother, he heard the sound of giving blow but he could identify accused Tashil Debbarma due to the electric light of house and corridor of the house of his mother. In such a situation, the informant to save himself fled away from the spot but accused Tehsil Debbarma chased him to kill him.

[19] The accused left and while running from the spot he saw his younger brother Sri Bishal Debbarma and his wife along with one year child on her lap were also running to save their life and thereafter he came out from jungle and took shelter in the house of Smti. Nanda Rani Debbarma. After some time he went to his house and saw that

neighboring people came to his house and he went to the house of his mother and saw that bleeding dead body of his mother was lying on the bed and he heard from the people that accused Tashil Debbarma while leaving also attacked their neighbour Biplab Debbarma and Biplab Debbarma sustained bleeding injury on his hand.

[20] PW-18 namely Smt. Balati Debbarma in her evidence deposed that Subhalaxmi Debbarma is her mother in law and on 17.12.2018 at about 4/4.30 am Tehsil Debbarma went to their house and called her husband and her mother in law asked her why did she come and at that time Tehsil Debbarma remained silent for some time and thereafter broken the door of their house and assaulted her mother in law with an axe. At that time, her husband called her brother in law Ajit Debbarma but the accused tried to assault and chased them and she, her husband and her brother in law fled away and went to the Jungle.

[21] Thereafter they came to the spot and saw that her mother in law is lying dead on the bed. They were staying in the same house but separated by partition. When Tehsil Debbarma called her husband they woke up from the sleep and saw the incident and while returning accused Tehsil Debbarma had cut finger of one Biplab Debbarma and she can identify accused Tehsil Debbarma and identified the accused in the dock. PW-18 also deposed that she had seen the incident committed by accused as because there was electric light in the room of her mother in law.

[22] From the above mentioned evidence of PWs, this Court finds, the evidence of the above mentioned PWs are corroborative to each other as to the fact of giving blows by accused Tashil Debbarma with axe on the deceased. PW-8, 11, 17 and 18 are relative of the deceased and their evidence are to be strictly scrutinized and on strict scrutiny, it reveals that the same are cogent and corroborative and, thus, can be relied on. Moreover, the evidence of relative witnesses cannot be said to be interested witnesses unless it is shown that the said witnesses are interested to see the conviction of the accused.

[23] Learned Addl. P.P. vehemently opposes the argument of the learned counsel appearing for the appellant that there is no direct eye witness to the case. But PW-11 in his deposition has categorically stated that the deceased was sleeping in their adjacent room. At the relevant point of time when the deceased told the accused to go away all the lights were put on and immediately thereafter, the accused entered the dwelling room by breaking the back door and started making blows with an axe at his hand. PW-9 made an attempt to stop the accused person from attacking the deceased. According to this Court the statements made by PW-9 and PW-11 supporting the case of the prosecution. We may take reference of the statements recorded under Section-313 of Cr. P.C. of the accused for further clearance and the relevant questions and answers may be reproduced hereunder:

“Question No.22: PW.8 Sri Ajit Debbarma @ Ukil in his evidence deposed that on 17.12.2018 in the early morning around 4/4.30 am he was sleeping in his dwelling hut and at that time his brother namely Bishal Debbarma called him and informed him that accused Tashil Debbarma (you) was assaulting his mother.

Do you have anything to say in this regard?

Answer: yes

Question No.23: PW.8 further deposed that immediately he woke up and rushed out of his room and found accused Tashil Debbarma (you) was assaulting his mother with an axe just near the door of the dwelling room and when he tried to save her mother the accused (you) attempted to assault him by an Axe.

Do you have anything to say in this regard?

Answer: Yes

Question No.24 PW. 8 further deposed that somehow he managed to save himself and out of fear ran away and took shelter in a nearby jungle. Do you have anything to say in this regard ?

Answer: Yes.

Question No.25: PW.8 further deposed that accused Tashil Debbarma (you) followed him and searched him but could not find him out and after half an hour when he returned back to his house he found their mother was lying in her bed with severe bleeding injury on the various parts of her body and she was dead then.

Do you have anything to say in this regard?

Answer: Yes.

Question No.28 : PW-9 Sri Biplab Debbarma in his evidence deposed that informant Ajit Debbarma is one of his neighbours and on 17.01.2018 in the early morning around 4/4.30 am on hearing hue and cry in the house of informant he woke up and firstly he proceeded towards the urinal point and started making blow with the axe in his hand out of fear he closed the door of urinal point.

Do you have anything to say in this regard?

Answer : Yes, it is true.

Question No.29 : PW-29 further deposed that accused started making blows with the axe in the door and thereby cut down the door and he also received blows of axe in his hand and thereby received severe bleeding injuries.

Do you have anything to say in this regard?

Answer : Yes it is true.

* * * *

[24] In our 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-appellant to be disbelieved. All the witnesses supported the entire case of the prosecution with regard to commission of offence by the accused-person. Hence, the conviction and sentence as held by the learned Court below against the accused-appellant, stands affirmed.

[25] In the result, the appeal stands dismissed. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs forthwith.

B. PALIT, J

T. AMARNATH GOUD, J

A.Ghosh

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