

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A.(J)15 of 2023**

Dwipjoy Das @ Tamal,
son of late Sunil Das,
resident of Sukantanagar, P.S. Kumarghat,
District : Unakoti Tripura

---- Appellant(s)

Versus

The State of Tripura,
to be represented by the
Ld. Public Prosecutor,
High Court of Tripura, Agartala

---- Respondent(s)

For Appellant(s)	:	Mr. K. Nath, Adv.
For Respondent(s)	:	Mr. S. Ghosh, Addl. P.P.
Date of Hearing & Judgment & Order	:	05.02.2024
Whether fit for reporting	:	NO

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

Judgment & Order(Oral)

(Per : Justice T. Amarnath Goud)

Heard Mr. K. Nath, Learned counsel appearing for the appellant as well as Mr. S. Ghosh, Learned Addl. P.P. appearing for the State-respondent.

2. This is an appeal under Section 374(2) of Cr.P.C. against the judgment dated 08.02.2023 passed by the Learned Session Judge, Unakoti Judicial District, Kailashahar in Case No.Sessions Trial 11(U/K) of 2019 (T-1), whereby and where under the Learned Sessions Judge convicted the appellant for commission of an offence punishable under Section 302 of IPC and sentenced to him to suffer RI for life and also to

pay fine of Rs.40,000/- only in default to undergo further RI for six months.

3. The case of the prosecution as revealed in the written ejahar submitted by the complainant namely Sri Sanjit Das is that on 06.04.2018 at about 07:00 hrs. a quarrel was going on between the mother of the complainant and the mother of the accused Dwipjoy alias Tamal Das, at the house of the complainant at Sukantanagar under Kumarghat P.S. and suddenly, the accused became furious and pushing punch to the complainant's mother namely Smt. Jatana Das. On the same date, time and place the accused Dwipjoy alias Tamal Das physically assaulted the father of the complainant namely Sushil Das by a wooden lathi on his forehead and as a result of which he received grievous injury on his head and during treatment, he succumbed to his injuries at Dharmanagar Hospital at about 16:00 hrs.

4. On the basis of this written ejhar KGT P.S. Case No.027/2018 under Section 302 of IPC was registered against the accused person namely Dwipjoy alias Tamal Das and the case was endorsed to SI Suman Saha for investigation. On completion of the investigation, IO submitted charge sheet vide No.24/2018 and under Sections 323/302 of IPC dated 30.06.2018 against the accused person to face trial in the open Court of law.

5. On 26.07.2018, the then Learned CJM, Unakoti, Kailashahar after receiving the charge sheet transferred the case record to the Court of Learned Judicial Magistrate, 1st Class, Kailashahar, Unakoti and cognizance of offence was taken by the then Learned Judicial Magistrate, 1st Class, Kailashahar on 31.07.2018 under Sections 302/323 of IPC against the accused Sri Dwipjoy alias Tamal Das and on 18.03.2019, this Court received the case record on commitment and on 04.04.2019 charge under Sections 323/302 of IPC was framed against the accused

by the then Learned Sessions Judge, Unakoti, Kailashahar and trial began accordingly.

6. To substantiate the charge, the prosecution has examined as many as 09(nine) witnesses. Defence case as revealed from the trend of the cross-examination of the prosecution witnesses and examination of the accused under Section 313(1)(b) of Cr.P.C. is of total denial and defence side inclined to adduced defence evidence and accordingly, accused has examined 03(three) witnesses in support of his defence.

7. At the time of hearing, Mr. K. Nath, Learned counsel appearing for the appellant submitted that the Learned Court below at the time of appreciation of evidence on record did not consider the evidence on record of the accused-appellant and his witnesses and came to a wrong finding that the present appellant committed murder of the deceased and urged for setting aside the judgment and order of conviction passed by the Learned Sessions Judge. He has also drawn the attention of the Court referring the evidence of the witnesses and submitted that there is no direct evidence on record that the present appellant also had the intention to cause murder or death of the deceased, rather, the deceased assaulted and caused hurt to his sister and at the time of rescue of his sister, the alleged firewood somehow inflicted on the head of the deceased and he himself sustained injury and ultimately succumbed to his injury but this part of evidence was not considered by the Learned Court below.

8. Finally, Learned counsel for the appellant submitted that if at all the Court considers the appellant to be guilty, in that case, the charge to the extent punishable under Section 304 Part-II of IPC lies against him and prayed for converting the sentence from Section 302 to Section 304 Part-II of IPC.

9. During the course of his submission, Mr. K. Nath, Learned counsel appearing for the appellant has relied on a judgment of the apex Court in **Deepak versus State of Uttar Pradesh (now Uttarakhand)** reported in **(2018) 8 SCC 228** where it has been stated as follows :

"7. On consideration of the entirety of the evidence, it can safely be concluded that the occurrence took place in the heat of the moment and the assault was made without premeditation on the spur of time. The fact that the appellant may have rushed to his house across the road and returned with a sword, is not sufficient to infer an intention to kill, both because of the genesis of the occurrence and the single assault by the appellant, coupled with the duration of the entire episode for 1 ½ to 2 minutes. Had there been any intention to do away with the life of the deceased, nothing prevented the appellant from making a second assault to ensure his death, rather than to have run away. The intention appears more to have been to teach a lesson by the venting of ire by an irked neighbour, due to loud playing of the tape recorder. But in the nature of weapon used, the assault made in the rib-cage area, knowledge that death was likely to ensue will have to be attributed to the appellant."

10. On the other hand, Mr. S. Ghosh, Learned Addl. P.P. appearing for the State-respondent strongly opposed the submission of the Learned counsel appearing for the appellant and submitted that there is clear evidence regarding the involvement of the accused-appellant with the alleged offence so there is no scope to show any lenient view or mercy to the appellant because the accused on the relevant day at the alleged occurrence of offence by a piece of firewood caused hurt to the deceased to his head for which he sustained fatal injury and ultimately succumbed to death. So, Learned Addl. P.P. urged for upholding the conviction of the appellant awarded by the Learned Trial Court.

11. We have heard detailed argument of Learned counsel of both the parties and also gone through the evidence on record. However, before coming to the conclusion of the appeal let us revisit the evidence on record of the prosecution as well as the accused adduced before the Learned Trial Court.

12. PW-1, Shri Sanjit Das has deposed that on 06.04.2018 at about 7/8 am an altercation took place in between his mother and his cousin brother and sister. His aunty was also present there. At that time, his father was sleeping in the house. Hearing sound of their altercation, his father woke up. In the meantime, his cousin brother namely Tamal Das @ Dipjoy Das gave a blow to his mother. His father came in front of the door of their hut and asked Tamal why he was doing so. At that time by means of fire wood Tamal gave a stroke on the head of his father to which his father fell on the earth. His father was shifted to Kumarghat hospital and from Kumarghat he was referred to Dharmanagar hospital. On that day, he was at Jumpui and over phone his mother informed him the above incident and hearing the fact, he came to Kumarghat but in the mean time, his father was shifted to Dharmangar. As such, again he went to Dharmanagar. At about 4/4-30 pm his father died at Dharmanagar hospital. At about 6/7 pm, he reached at Dharmanagar. On that night, dead body of his sister was not handed over to him. On the next day morning postmortem examination was held over the dead body of his father and thereafter, the dead body was handed over to him and he brought the dead body of his father and thereafter, the dead body was handed over to him and he brought the dead body of his father to his house at Sukanta Nagar, Kumarghat. It is to be mentioned here that after death of his father again he came to Kumarghat at night and lodged a written complaint to the OC, Kumarghat PS. One Suman Das wrote the complaint petition to his dictation and he put his signature in it. Witness identified his signature in the complaint petition and on his identification his signature in the complaint petition is marked as Exbt.1/1. On 07.04.2018 police visited his house and seized the firewood by which Tamal assaulted his father under a seizure list and in the seizure list myself stood as witness. On identification by this witness his

signature in the seizure list dated 07.04.2018 marked as Exbt.2/1. He was unable to identify the firewood which was seized by the police. Witness identified the same in the Court and the identification has been marked as Exbt.M.O.1. Accused Tamal is present in the court and is identified.

13. In the cross-examination he has deposed that his elder uncle died about 5/6 months prior to the said incident. They used to reside separately in separate mess but in the same house. He born in the same house. There are four separate huts in the same house. Their hut is in the northern viti and two huts of the accused persons are in the eastern viti. In the southern viti their one hut is under construction. Their hut is of bamboo made with GCI sheets. There is a courtyard surrounded by all the four huts. There is a stack of firewood in between their two huts. The family of accused persons maintained by his aunty and her daughter namely Mithu. They used to do private tuition and in the morning students used to come in their house. By profession his father was a driver of Tripper. Nothing more relevant came out during cross-examination except denial.

14. PW-2, Jatana Das has deposed that on 06.04.2018 at about 7/7-30 am his neighbour namely Supriya Nath visited his house to collect ash from his katcha oven. At that time, his elder sister-in-law namely Bakul Pal Das started quarrel with him over filthy issue. In the meantime, her daughter namely Mitu and son namely Tamal @ Dipjoy Das came forward and also joined with their mother and quarreled with him. At that time, Tamal also gave him a blow on his chest. At that time, his husband was sleeping, woke up and came out and asked them the reason of their doing so. At that moment, Tamal by taking a firewood gave a stroke on the forehead of his husband to which he fell on the earth. With the help of Supriya he took him inside the room also poured

some water in his head also arranged for shifting him to Kumarghat hospital along with his another sister-in-law namely Niva Deb. From Kumarghat her husband was referred to Dharmanagar hospital. Accordingly, she shifted him to Dharmanagar. It is to be mentioned that her son Sanjit Das was at Jumpui on that day and as such, she conveyed the information to her son over phone in between 9 am to 10 am. As referred by Kumarghat hospital she shifted her husband to Dharmanagar along with Abha and Babul Dey who are also her sister-in-law and the husband of said sister-in-law. CT scan was done and necessary treatment were also rendered but ultimately at about 4/4-30 pm her husband expired in the said hospital. At about 6/7 pm her son Sanjit came to Dharmanagar hospital. In the meantime, dead body of her husband was shifted to hospital morgue. In the hospital, the police personnel visited and prepared the surathal report over the dead body of her husband and in the said surathal report, she stood as witness. On identification by this witness her signature in the surathal report has been marked as Exbt.3/1. After arrival of her son, they came to Kumarghat. On the next day postmortem examination was held over the dead body of her husband and thereafter, the dead boy was handed over to them. On the date of incident on their return to Dharmanagar her son namely Sanjit lodged FIR in Kumarghat PS. On 07.04.2018 police personnel visited their house and seized one piece of firewood as it was used by Tamal to assault her husband under a seizure list and in that seizure list herself stood as witness. Witness identified her signature in the seizure list and it has been marked as Exbt.2/2. Witness also confirmed the Exbt.M.O.1 to be the same which was seized by the police from her house as the weapon of offence. Accused Tamal was also present in the Court and was identified.

15. During cross-examination she has deposed that a police officer of Dharmanagar talked with her in Dharmanagar District Hospital after death of her husband. She has stated to the police at Dharmanagar that there was quarrel in between herself and Bakul Pal Das and thereafter, her daughter and son also joined with her and quarreled with he. She has stated to the police that Tamal assaulted her husband by a firewood. It is a fact that Bakul Pal Das and her daughter Mitu used to do private tuition in her house at various time. Husband of Bakul Pal Das died about 5/6 months back of that incident. In their family, there are only the above named persons. They used to maintain their family by their own income. Nothing more relevant came out during cross-examination except denial.

16. PW-3, Supriya Nath has deposed that he is an adjacent neighbour of the complainant of this case. She has deposed that on 06.04.2018 at about 7/7-30 am she visited their house to collect ash from katcha oven while Jatana Das was collecting ash from the oven suddenly the mother of Tamal came to that place which is the Baranda of the homestead of the complainant. Mother of Tamal started using filthy language attacking Jatana Das to which Jatana asked mother of Tamal about the reason of her such act and conduct. In the meantime, Mitu and Tamal came also came to that place and they also joined in the quarrel in favour of their mother. At that time, Tamal gave a blow to Jatana Das. In the meantime Sushil Das, husband of Jatana also came out from his room and asked Tamal and his sister why they are doing so and in the meantime, Tamal by taking a firewood gave a stroke on the forehead of Sushil Das to which Sushil Das fell on the earth. Thereafter, herself and Jatana poured some water on his head and also took him inside the room. After arranging for shifting of Sushil Das she left their house and came back to her house. Probably after 4/5 days the police personnel of

Kumarghat P.S. produced her before the Court at Kailashahar and therein her statement was recorded by a Magistrate. Her signatures were also obtained in the said statement. The contents also read over to her by the Magistrate. Witness identified her signature in her statement which was recorded under Section 164 of Cr.P.C. On her identification her signatures in her statement recorded under Section 164 Cr.P.C. in three sheets are marked as Exbt.4/1 to Exbt.4/3. Tamal is present today in the Court and is identified. In c/w this case police also visited the house of the complainant and therefrom seized the firewood which was used by Tamal in assaulting Sushil on the date of incident under a seizure list and in that seizure list herself stood as witness. On identification by this witness her signature in the seizure list dated 07.04.2018 in c/w seizure list of the firewood has been marked as Exbt.2/3. Witness also confirmed the firewood to be the same and the same already has been marked as Exbt.M.O.1. During cross-examination save and except denial nothing relevant came out.

17. PW-4, Debabrata Das has deposed that about one year back one day at about 7/7-30 am he was in a booth office of BJP political party by the side of the road in between his house and the house of Sushil Das. At that time, he heard hue and cry from the house of Sushil Das and hearing the same himself and some others who were in the said booth office went to that house and found Sushil Das was sitting on the earth touching his head by his hand. Thereafter, Sushil was shifted to Kumarghat hospital. He heard that Tamal assaulted Sushil by a lathi. He died in Dharmanagar hospital where he was referred from Kumarghat. Accused Tamal is present today in the Court and is identified.

18. During cross-examination, he has deposed that at a distance of 100 meter from his shop, house of Sushil is situated. Distance between BJP booth office and the house of Sushil is about 60/70 meter.

Rashendra Debnath who was the booth president at that time and he also rushed to the house of Sushil. The mother and sister of Tamal are private tutor by profession. While he rushed to their house there were about 25/30 persons in that house.

19. PW-5, Abha Das (Dey) has deposed that about one year back one day at about 8-30 am wife of her brother namely Sushil informed her over phone that Tamal who is also son of her another brother namely Sunil Das assaulted Sushil by a firewood on his head. Hearing this fact, she rushed to Kumarghat hospital. Sushil was referred to Dharmanagar hospital and as such, she also went to Dharmanagar along with her husband and wife of Sushil namely Jatana. There in the attending doctor rendered treatment to Sushil but about 4 pm he died in the said hospital. Police personnel visited the hospital. In the hospital daroga also obtained her signature and the signature of her husband in a paper. Witness identified her signature on the inquest report and on her identification her signature in the inquest report has been marked as Exbt.3/2. At about 7 pm son of Sushil also visited Dharmanagar hospital. Keeping the dead boy of her brother at Dharmanagar hospital they came to Kumarghat. Tamal is present today in the Court and is identified.

20. During cross-examination she has deposed that Daroga of Dharmanagar P.S. recorded her statement and she has stated to Daroga of Dharmanagar that Tamal assaulted Sushil by a firewood on his head which was informed to her by the wife of Sushil over phone. Nothing more relevant came out.

21. PW-6, Ranjit Kr. Nath has deposed that on 26.04.2018 he was posted at Dharmanagar P.S. as ASI of police. On that day, vide Dharmanagar GD entry No.31 dated 06.02.2018 he came to Dharmanagar District Hospital and prepared surathal report over the dead body of Sushil Das, son of late Lalit Mohan Das of Sukanta Palli,

Kumarghat after observing proper formalities in presence of the witnesses and this is his said surathal report bearing his signature. On identification the surathal report is marked as Exbt.3/3 as a whole and signature has been marked as Exbt.3/2. Thereafter, he has prepared dead body challan forwarding to M.O., Dharmanagar hospital for postmortem examination and this is his said dead body challan and on identification the same has been marked as Exbt.5. He has also examined and recorded the statement of Jatana Das, Abha Dey and one Babul Deb who are the witnesses of the preparation of surathal report. During cross-examination nothing relevant came out.

22. PW-7, Suman Das has deposed that on 06.04.2018 one Monojit @ Sudip Das who was known to him approached him for writing an FIR on his behalf and then he wrote FIR as per his version and put his signature as scribe in the said FIR. Witness identified the written FIR and his signature thereon on identification the FIR has been marked as Exbt.1/2 as a whole and his signature has been marked as Exbt.1/3. During cross-examination nothing relevant came out.

23. PW-8, Suman Saha has deposed that on 07.04.2018 he was posted at Kumarghat P.S. as SI of Police. On that day O/C Kumarghat namely P.S. Jayanta Karmakar registered Kumarghat P.S. case No.27/18 under Section 302 of IPC and endorsed him for investigation. During his investigation, he visited the P.O., examined the complainant and another witness i.e. PW-2 and recorded their statement and then he arrested the FIR named accused namely Dipjoy Das. Later on, again he visited the PO and prepared hand sketch map and separate index of the PO, on identification the same are marked as Exbt.6 and 6/1 and then seized one dry wooden file from the house of the complainant by which the accused allegedly hit over the head of the deceased, preparing seizure list, on identification the seizure list marked as Exbt.2/4 as a whole. He

also arranged one eye witness Supriya Nath and accordingly recorded their statement and thereafter arranged her getting recorded statement under Section 164 of Cr.P.C. Thereafter, he has further recorded statements of two witnesses. Thereafter, he has collected SCD report and Post mortem examination report of the deceased Sushil Das prepared by ASI Ranji Kr. Nath. He has also examined and recorded statement of scribe of the FIR. At last, on completion of investigation and having found prima facie case he has filed charge sheet against the FIR named accused Dipjoy Das vide Kumarghat PS charge sheet No.22/18 dated 30.06.2018 under Section 302 and Section 323 of IPC. This is his said charge sheet bearing signature and it has been marked as Exbt.7(6 sheets). The seized wooden file (M.O.1) is identified by the witness, witness also identified the accused in the dock.

24. In the cross-examination he has deposed that along with SCD report of deceased Sushil Das prepared by SI Ranjit Kr. Nath and also received 161 statement of witnesses Jatana Das, Abha Dey and Babul Dey recorded by ASI Ranjit Nath of Dharmanagar P.S. 'H' mentioned in his P.O. index indicates shop of Debabrata Das and except his shop there are no other residential house or other shop situated near by the PO. It has been further revealed in his investigation that the father of the accused had died before the accident of the deceased. The family of accused consists of his mother namely Bakul Pal(Das) and sister Mitu Das. He has also found that after death of father of the accused his sister and mother maintained the family of the accused by way of private tuition. Noting more relevant came out during cross-examination.

25. PW-9, Dr. Ashish Kr. Sen has deposed that on 07.04.2018 he was posted in the District Hospital, Dharmanagar and on that day, as directed by the Hospital Super he conducted the autopsy of Sushil Das

aged about 52 years, son of late Lalit Mohan Das of Kumarghat. The postmortem was started at 11 am. He found fracture on the skull over the left fronto parietal area. Durometer under the skull was ruptured. The brain was damaged and liquefied and mixed with blood. Time of death is about 24 hours from the time of postmortem examination. Cause of death was head injury and injury to the brain caused by impact with a hard object. This is the report prepared by him and the signature has been marked as Exbt.A. The witness confirms that Exbt.M.O.1 cause the injuries in his postmortem report.

During cross-examination it has been stated that the injury cannot happen by accidental fall on a heap of firewood. The Exbt.M.O.1 is a piece of firewood. Nothing more relevant came out during cross-examination.

26. We have heard arguments of both the sides and gone through the evidence on record i.e. the evidence of the prosecution as well as the accused adduced before the Court in course of trial. From the evidence on record, it appears that on 06.04.2018 at about 7/8 am in the morning a hot altercation took place in between the mother of the informant and his cousin brother and sister. That time, his aunt was also present there and his father was sleeping in the room. Hearing the sound, his father woke up and in the mean time his cousin brother Tamal Das @ Dipjoy Das gave a blow to his mother and when his father came in front of the door of the hut and asked the appellant as to why he was doing so, that time the appellant by means of a firewood which has been seized by the IO gave a stroke on the head of his father for which he fell down on the earth and he was immediately shifted to Kumarghat Hospital and from there he was further referred to Dharmanagar Hospital and on that hospital his father succumbed to death. The case was

accordingly registered and the IO after completion of investigation laid charge sheet against the present appellant.

27. We have also gone through the postmortem examination report which was proved by the prosecution of this case. At the same time as already stated in the course of examination the appellant desired his willingness to adduce witnesses in support of his defence, accordingly, the appellant himself was examined in support of his defence and he has also adduced two more other witnesses to substantiate his defence.

28. Further, from the evidence on record of the accused, it appears that on 06.04.2018 at about 6/6.30 am in the morning he was sleeping in his house at Sukantanagar and his elder sister and mother runs by doing private tuition. He woke up after hearing hue and cry of his sister and saw that his uncle Sushil Das (since deceased) was assaulting his sister by firewood and he tried to stop him and his uncle was weak and he intervened. That time, the sister fell down under the firewood and after that, they took their uncle inside the house and his sister was admitted in the hospital and on the following day, she was discharged and admitted the death of his uncle, Sushil Das. The prosecution from the trend of cross-examination of the accused could not raise any doubt to disbelieve the prosecution story.

29. DW-2, Malabika Das the sister of the accused-appellant also deposed in the same manner that the deceased Sushil Das assaulted her by firewood on the left thigh and she raised hue and cry. That time, the appellant Dipjoy came outside the room and he tried to take back the firewood from the hand of his uncle he fell down on the firewood and got hurt on his head due to fall. The prosecution by the trend of cross-examination could not raise any doubt to discard the evidence of said witness, DW-2.

30. Similarly, DW-3 Smt. Nikita Paul is also a student who was undergoing private tuition in the residence of the accused on that day. She also deposed that on the alleged day in course of quarrel she found that the deceased was assaulting Malabika i.e. DW-2 with a firewood and that time, the father of Malabika came to intervene his uncle and when he tried to pull the said firewood from the hand of his uncle, he suddenly fell down on the firewood and got injury. The prosecution by the trend of cross-examination also could not raise any doubt to the evidence of said witness.

31. Thus, from the evidence on record of the prosecution as well as the accused appellant it appears that on the relevant day some dispute cropped up amongst both the parties and at that time the deceased was assaulting the sister of the accused-appellant by a piece of firewood and when the appellant came forward to save his wife, that time either by the firewood he sustained injury of his own or he fell down on the firewood for which he sustain fatal injury to his head and ultimately succumbed to his single injury.

32. From this set of evidences it is clear that the accused had no intention to kill the death of his uncle and there was no prior provocation to cause death of his uncle by firewood for which in our considered view Section 302 of IPC as determined by the Learned Trial Court below was not proper for upholding the conviction of the appellant under the said provision of law.

33. Rather in our considered view after going through the evidence on record it appears that this is a case where the appellant can be convicted under Section 304 Part-II of IPC i.e. culpable homicide not amounting to murder and accordingly, we have decided to convert the sentence from Section 302 of IPC to Section 304 Part-II of IPC which we hereby do.

34. In the result, the appeal filed by the appellant is hereby allowed with modification that the appellant be convicted under Section 304 Part-II of IPC in place of Section 302 of IPC for a period of five years. The period of detention undergone by the convict in custody be set off accordingly.

35. With the above observation, this appeal is accordingly allowed in part to the extent as indicated.

The appeal stands disposed of .

Send down the LCRs.

A copy of this order be communicated to the Learned Court below for doing the needful.

JUDGE

JUDGE

