

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. A(J) No.46 of 2023

Loknath Majumder @ Chotan

Son of Lt. Srimanta Majumder
of vill- Kali Krishnanagar,
P.S- Jatrapur, District- Sepahijala Tripura.

..... Appellant(s).

Versus

The State of Tripura

.....Respondent(s).

For Appellant(s)	:	Mr. S. Bhattacharjee, Advocate.
	:	Mr. Subendu Noatia, Advocate.
For Respondent(s)	:	Mr. Raju Datta, P.P.
Date of Hearing	:	03.05.2024
Date of Judgment	:	05.08.2024
Whether fit for reporting:	:	No

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HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

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The appeal arises of the judgment of conviction and sentence dated 12.09.2023 by Ld. Special Judge (Children's Court), Sepahijala District, Sonamura in case No. Special (Children) No.01 of 2017.

[2] The date of birth of the appellant as per the record is 30.01.1999 and the alleged date of offence is 09.05.2016. Therefore, at the time of alleged occurrence the appellant was about 17 years 3 months and 9 days for which after preliminary assessment conducted by the Juvenile Justice Board and the case being transferred for trial by the Children Court (Court of Sessions Judge, Sepahijala District), he was tried by the Children's Court as the offence was a heinous one. Indisputably, the alleged occurrence of offence was 09.05.2016, therefore, Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, JJ Act, 2015) is applicable in case of present appellant.

[3] Ld. Children's Court after trial convicted the appellant under Section 341 and Section 304(Part-II) of Indian Penal Code (for short-IPC) and was sentenced to suffer simple imprisonment for 1(one) month under Section 341 of IPC and rigorous imprisonment for 7(seven) years and to pay fine of Rs.5,000/-(Rupees five thousand) under Section 304(Part-II) of IPC and in default to pay the fine, to suffer further simple imprisonment for 1(one) month.

[4] Allegations borne in the FIR lodged by the son of the deceased, Parikshit Dhar namely Sri Sunil Dhar at Jatrapur PS on 9.5.2016, are that on that day at around 7:30 AM when his father reached near the house of Kanu Shil (PW-2) by riding bicycle, the appellant along with his other two brothers indiscriminately hit him with 'dao' and other instruments causing serious injuries on his person. Immediately, he was taken to Kathalia CHC and thereafter he was referred to GB Hospital, Agartala. After the incidents, those persons were loitering near the house of informant armed with weapons. The O/C Jatrapur PS initially registered the case as Jatrapur PS Case No.027 of 2016 under Sections 341/326/506/34 of IPC and ultimately filed the charge sheet under Sections 341/302/34 of IPC, as on arrival at GB Hospital, Agartala said Parikshit Dhar was found dead by the Medical Officer.

[5] Ld. Children's Court framed charge against the appellant under Section 341 of IPC as well as under Section 302, IPC to which he chose trial denying the charges and prosecution thereafter examined total 28 witnesses to prove the charges.

[6] Mr. Sankar Bhattacharjee, learned counsel of the appellant submitted that the informant of the case was not examined and it was also not there in the record as to how he had learnt about the incident.

Regarding the alleged confession of appellant made in presence of other witnesses; it was argued that same had no evidential value inasmuch as it was recorded in presence of the police. Referring to the evidence of PW-13 Dr. Pranab Choudhuri (Autopsy Surgeon), Mr. Bhattacharjee, learned counsel tried to impress the Court that as per the evidence of said Medical Officer, the injuries could be caused otherwise than physical assault. Lastly, Mr. Bhattacharjee, learned counsel submitted that there was no recovery of any weapon of offence i.e. 'Lathi' at the instance of the appellant and, therefore, same created further doubt in the veracity of the prosecution case.

[7] Mr. Raju Datta, learned PP, on the other hand, argued that there was no substantial cross-examination to the prosecution witnesses, more particularly PW.1, Monoranjan Das, PW-2, Kanu Shil, PW-10, Sri Dilip Das and PW-23 Smt. Nanda Rani Paul, who were the key witnesses of the occurrence. He also argued that there was no explanation offered by the appellant during his examination under Section 313 of CrPC in respect of the evidences brought against him by the prosecution and, therefore, adverse inference was required to be drawn against him. In this regard learned PP relied on a decision in case of **Rajkumar Vs. State of Madhya Pradesh, (2014) 5 SCC 353**, and the relevant paragraph thereof is extracted below:

"22. The accused has a duty to furnish an explanation in his statement under Section 313 CrPC regarding any incriminating material that has been produced against him. If the accused has been given the freedom to remain silent during the investigation as well as before the court, then the accused may choose to maintain silence or even remain in complete denial when his statement under Section 313 CrPC is being recorded. However, in such an event, the court would be entitled to draw an inference, including such adverse inference against the accused as may be permissible in accordance with law. (Vide Ramnaresh v. State of Chhattisgarh(2012) 4 SCC 257, Munish Mubar v. State of Haryana (2012) 10

**SCC 464 and Raj Kumar Singh v. State of Rajasthan
(2013) 5 SCC 722)"**

[8] Learned PP also submitted that non-examination of informant was not fatal for the prosecution. In this regard, he relied on another decision of the Apex Court rendered in **Harivadan Babubhai Patel vs. State of Gujarat, (2013) 7 SCC 45**, wherein reference was made to relevant paragraph No.24 which reads as under:

24. In State of H.P. v. Gian Chand(2001) 6 SCC 71 it has been opined that: (SCC p.81, para 14)

"14. ... Non-examination of a material witness is again not a mathematical formula for discarding the weight of the testimony available on record howsoever natural, trustworthy and convincing it may be. The charge of withholding a material witness from the court levelled against the prosecution should be examined in the background of the facts and circumstances of each case so as to find whether the witnesses are available for being examined in the court and were yet withheld by the prosecution."

The three-Judge Bench further proceeded to observe that the court is required first to assess the trustworthiness of the evidence available on record and if the court finds the evidence adduced worthy of being relied on, then the testimony has to be accepted and acted upon though there may be other witnesses available who could also have been examined but were not examined.

[9] From the evidences as surfaced by the prosecution, it appears that several witnesses were examined in this case but the star witnesses in this case appears to be PW-2, Kanu Shil and PW.23, Smti Nanda Rani Paul. PW.2, Kanu Shil deposed that on the date of the incident at around 7:30 AM the deceased came to him for his haircut, but the witness asked the deceased to come sometimes later as he was feeding his children. Shortly, thereafter he heard screaming sound of the deceased and rushed towards that point and noticed that the appellant with his other two brothers were beating the deceased with 'Lathies' causing bleeding injuries on him. He also tried to prevent the assailants and raised hue and cry, but same was not heard by neighbouring people and might be due to the noise of paddy crushing machine, such cry did not reached others.

[10] He also stated that thereafter he found PW-9, Sri Sajal Das of his village and requested him to bring an auto rickshaw to shift the deceased to the hospital. Simultaneously, taking the bicycle of the deceased, he also rushed to the house of the deceased and informed the matter to his wife. Immediately, thereafter the wife and two sons of the deceased arrived at the spot and PW-9 also brought one auto rickshaw of PW-11, Sri Priyalal Das. Sri Priyalal Das thereafter with the assistance of PW-1 Manoranjan Das and Maran Das and two sons of the deceased shifted him to Kathalia CHC where the police also arrived and therefrom he was referred to Melaghar SD Hospital. They thereafter by an Ambulance shifted the deceased to the Melaghar SD Hospital and from said hospital the deceased was referred to GBP Hospital, Agartala but without proceeding further to Agartala, he returned to his village.

[11] In his cross-examination he confirmed that in his evidence given earlier in connection with the case, he also named the appellant as one of the assailants. One omission was taken by the defence from this witness that he did not mention the name of weapon as "Lathi" used by the assailants for the said physical assault. The topographical situation of the place of occurrence was also tried to be taken from this witness. He also stated in his cross-examination that Kalikrishna Nagar Market was at a distance of 70/80 kms, (may be meters) and it was not visible from the place of occurrence due to a turning point on the road and a noise was difficult to be heard in the said market.

[12] PW-9, Sajal Das also corroborating with PW-2 stated that at the relevant time hearing hue and cry of said Kanu Shil, he rushed to the spot and found the deceased lying with bleeding injuries and there he learnt that the appellant and his one brother physically assaulted the deceased. Thereafter he went to Kalikrishna Nagar Market and brought

one auto rickshaw for shifting the deceased to hospital and accordingly he was shifted to hospital. He was declared hostile by the prosecution and during cross-examination by the prosecution he admitted that he had stated to the police that he found the appellant and his two brothers to beat an aged person with lathi and sticks and when he along with one Dilip Das and Kanu Shil proceeded further, they found the victim to be Pariskhit Dhar. In his cross-examination by the defence, he confirmed that he had found the deceased lying on the road in unconscious condition. However, he contradicted with PW.2 only to the extent that according to him, Kalikrishna Nagar Market was visible from the place of occurrence. According to him, subsequently marketeers also assembled there. He also confirmed in his cross-examination that the auto rickshaw which he brought was of one Priyalal Das, PW-11.

[13] PW-11, Sri Priyalal Das also corroborated that on that day at the request of one person, he went to Adharsha Colony from the auto-rickshaw stand of K.K. Nagar market and found another person lying with bleeding injuries and immediately by his auto rickshaw he shifted said injured person with the help of others to Kathalia hospital. One omission was tried to be taken from him by the defence that he did not state in his previous deposition in connection with this case that on the relevant day he was at Kalikrishna Nagar Motor Stand. However, said omission is not significant.

[14] PW-23 Smt. Nanda Rani Paul, another most vital witness, stated that on the relevant day of incident at around 7:00/7:30 AM she was proceeding for collecting milk from one Braja Paul and when she reached near the residence of the appellant's brother, found the deceased was also coming from the opposite direction by riding a bicycle and there the appellant and his two brothers detained him on the road

and the present appellant with a piece of bamboo stick gave a blow on him and consequently he fell down on the earth with his bicycle and thereafter, three brothers severely assaulted him with bamboo sticks causing bleeding injuries on his person. According to her, she thereafter raised alarm and when the neighbouring people appeared there, the assailants absconded. Then by an auto rickshaw the deceased was shifted to the hospital. She identified the appellant in the court by his nickname. In her cross-examination by defence she confirmed that she had stated in her earlier evidence recorded in connection with trial of other two accused that the appellant and his two brothers detained the appellant on the road. She also confirmed that on the road connecting both Rajendra Tilla and Kalikrishna Nagar, she found other two brothers of the appellant quarrelling with the deceased. Basically there is no significant cross-examination to disbelieve this witness; rather her cross examination has further strengthen her examination in chief.

[15] PW-1, Sri Manoranjan Das another co-villager stated that at the relevant day in the morning when he was going to Kalikrishna Nagar Market, he heard commotion at the place of occurrence located at the entrance point of the house of the appellant and found that the deceased was lying there on the ground with bleeding injuries. He also stated that he found PW-2, Sri Kanu Shil and another Smt. Mita Paul present there and from PW-2 he learnt that the appellant and his two brothers had physically assaulted the deceased. Thereafter he applied his towel on the wounded portion of the head of the deceased and took him to the Kathalia CHC with the help of others wherefrom he was taken to Melaghar SD Hospital and then to GBP Hospital, but when he was referred to GBP Hospital he expired.

[16] He also deposed about seizure of one bamboo stick, some blood soaked soil sample and one pineapple leaf containing blood stain by the investigating officer in his presence by preparing two different seizure lists where he put his signatures. In his cross examination, he also confirmed that in his previous deposition he gave similar version regarding the incident as reflected above except with a small deviation that earlier he told that he learnt the names of the appellant and his brothers from some females present at the spot and not from said Kanu Shil. According to him, first of all the deceased was taken to Jatrapur Police Station and as per instructions of the police he was then taken to the Kathalia Hospital at around 08:30 AM. Basically there is also nothing to disbelieve this witness.

[17] According to PW-3 Smt. Sumitra Rani Paul, PW-10 Sri Dilip Das, PW-12 another Monoranjn Das, and PW-21 Smt. Saraswati Dhar (wife of deceased), they all came to the spot after the occurrence and PW-3, PW-10, and PW-12 categorically stated about the presence of said PW-2, Kanu Shil at the place of occurrence from whom they learnt that the appellant and his two brothers had physically assaulted the deceased. PW-21 also corroborated with said PW-2 Kanu Shil that after the incident Kanu Shil came to her house and informed her about the incident and thereafter she along with her two sons went to the spot and found the deceased lying on the ground by the side of road with severe bleeding injuries. Except the case of PW.10, there was no significant cross-examination of any of these witnesses on the said points to discard their evidences.

[18] The above said PW-3, Sumitra Rani Paul was declared hostile by the prosecution and during her cross examination by the prosecution, she admitted that she had stated to the Investigating

Officer that the appellant with other two brothers brutally assaulted the deceased by lathi and dao and thereafter she raised alarm and when both PW-2 and PW-12 arrived there, the miscreants fled away. Even if said portion of her admission is ignored, still her evidence stands good so far the presence of PW-2 in the place of occurrence is concerned.

[19] During cross-examination, PW-10 stated that Kalikrishna Nagar Market is situated nearby the place of occurrence and there were 70/80 shops in the said market along with two rice mills owned by two other persons. He also stated that his house was situated at a distance of half mile from the place of occurrence and, therefore, his version that at the time of incident, he was in his house and hearing outcry he came to the spot, is found to be not much reliable. There was no significant cross-examination of PW-12. Anyway the defence through their cross-examination or otherwise could not render any of the above said witnesses untrustworthy except said PW.10 as discussed.

[20] PW-27, Dr. Runak Debbarma deposed that on 09.05.2016 he examined the deceased at Melaghar SD Hospital being referred from Kathalia CHC and after examining the deceased, he found blunt trauma in his head and some swelling on the lower part of both eyes along with bleeding from his nose and mouth. The witness also found multiple cut injuries in the facial area of the deceased and blunt trauma on his back and chest. The patient was vomiting due to such physical assault. According to him, he also found cut injury measuring 4 cm X 5 cm in size on the frontal region of head caused by sharp edged weapon and thereafter he referred the patient to GBP Hospital, Agartala. According to his opinion, the cut injury on the frontal of head and the swelling of the lower part of both eyes were severe in nature and said head injury was caused by sharp edged weapon and the swelling of both eyes were

caused by blunt edged weapon. He also proved his injury report (Exbt. 18). In his cross-examination he stated that such type of injury might or might not be caused by such type of weapon (Exbt.MO-1) i.e. dao and bamboo stick. This witness, therefore, was not sure about the weapon used for causing such injuries.

[21] PW-13, Dr. Pranab Choudhuri (Autopsy Surgeon) stated that he along with Dr. Prasenjit Das jointly conducted the post mortem examination of the corpse of the deceased and found multiple lacerated wounds in facial area of the deceased and also found multiple abrasions in the face, chest and back of the deceased. According to him, the bone deep lacerated wound found in the frontal area in midline which was situated 8 cm above the glabella, another lacerated wound found obliquely present over the outer aspect of right upper eye lid with sub-scalp hematoma present in the right side of scalp, and other two lacerated wounds found over the inner aspect of mucosal surface of right side of upper lip causing fracture of maxilla and mandible were sufficient to cause death in the ordinary course of nature individually or in combination and all the injuries were found ante mortem and fresh in nature.

[22] In his cross-examination by the defence, he confirmed that this type of injury might be caused by lathi also (emphasis laid). Though additionally he stated in his cross-examination that such type of injuries were possible if a person riding a bicycle strikes against a standing tree with maximum force only, but the defence could not raise any probability of any such incident in the evidence of the case.

[23] The prosecution also examined one Dy. Collector-cum-Magistrate namely Sri Prithwiraj Debnath as PW-24. He simply stated that on 18.05.2016 he went to Jatrapur Police Station and there in

presence of other two witnesses the disclosure statement of the appellant was recorded and he identified his signature therein. What was disclosed by the appellant was not stated by him.

[24] PW-14, Sri Paltan Dey also stated that the disclosure statement of the appellant was recorded by the then DCM of Sonamura in his presence and after such statement was recorded the appellant along with witnesses were taken to a site inside the Trishna Sanctuary where the appellant with other accused persons took shelter after commission of crime. PW-15 Sri Sajal Kumar Debnath, however, deposed that the appellant had disclosed as to how he along with his other two brothers physically assaulted the deceased in front of their house and thereafter he was taken to place of occurrence where he narrated the incident. In fact, above said evidences do not disclose any facts leading to any discovery at the instance of the appellant.

[25] There are also some formal witnesses, like PW-19, Sri Asish Majumder who was scribe of the FIR, PW-18, Sri Sunil Debnath and PW-22 ASI Ashit Bhattacharjee who deposed about the seizure of viscera of the deceased. PW-28, Suman Kumar Chakraborty (Dy. Director of State Forensic Science Laboratory) stated that after examination he did not find presence of common organochloro, carbamates and organophosphorous group of pesticides and ethyl alcohol in said viscera.

[26] According to PW-22 ASI Ashit Bhattacharjee, on 09.05.2016 he was attached at GBP Town Out Post and he seized blood stain gauge cloth belonging to the deceased by preparing the seizure list and also seized viscera of the deceased by preparing another seizure list in presence of the witnesses. The related seizure list of seizure of blood stain gauge was marked as 'Exbt.12' which shows that it was collected

at the time of post mortem examination by the doctor. PW-18, Sri Sunil Debnath also corroborated about seizure of said blood stain gauge.

[27] PW-26 Dr. Sabyasachi Nath, Senior Scientific Officer-cum-Assistant Chemical Examiner of Tripura State Forensic Science Laboratory, Narsingarh deposed that he had examined the blood sample of the deceased contained in plastic container in one gauge cloth and seized wearing apparels of the appellant and his other brothers, three broken pieces of bamboo sticks allegedly having blood stain seized from place of occurrence, one pineapple leaf stated to have blood stain seized from place of occurrence and one metallic dao with wooden handle stated to have blood stain and seized from nearby the place of occurrence. And after examination of all these materials, he came to conclusion that human blood of 'O' Group was found in jeans pant and T-shirt of one brother of appellant and also in said broken bamboo pieces, and the blood of the deceased as preserved in a gauge cloth was also found in to be of 'O' positive and except this no blood was detected in other articles. Thus, his evidence also relates those bamboo sticks with the incident of assault. However, in his cross-examination it was made confirmed that no blood was detected in the three quarter pant of present appellant.

[28] There are also some other formal witness like PW-16, PW-17 and PW-20 who stood as seizure witnesses of seizure of wearing apparels of the appellant and his brothers and also seizure of bamboo sticks, pineapple leaves etc.

[29] The testimonies of two vital witnesses like PW-2 and PW-23 and of some other witnesses who came to the spot just after the incident as discussed earlier and also considering the injury report and post mortem report of the deceased and the evidences of medical

officers proving those reports, are found to be sufficient to conclude that the appellant was involved in the incident and was responsible for the death of the deceased. Therefore, Ld. Trial Court committed no error in convicting him. According to Ld. Trial Court, the appellant was aged about 24 years at the time of pronouncement of the impugned judgment.

[30] From the impugned judgment, it also appears that Ld. Trial Court while sentencing the appellant ordered the Jail authority for taking necessary steps as reformatory measures like skill development, counselling, behaviour modification therapy and psychiatric support to the appellant. Simultaneously direction was also given to the Probation Officer to submit periodical progress report of the appellant to the Court in terms of the provisions of the JJ Act, 2015. Nothing could be shown from the side of the appellant regarding any lapse from the side of the Ld. Trial Court in due compliance of provisions of JJ Act, 2015.

Considering thus, it is held that the appeal is devoid of any merit and accordingly, the same is dismissed. The judgment and sentence of the Ld. Trial Court are hereby affirmed.

Return the LCRs with a copy of this judgment.

The disclosure of the identity of the appellant shall be regulated by the relevant provisions of the JJ Act, 2015 in the follow up action by the Registry.

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

JUDGE

SATABDI DUTTA

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