

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A(J).No.18 of 2024**

Shri Debendra Kanda @ Debu,
aged about 56 years, son of late Nirakar Kanda,
resident of Ganki Smramik Colony,
P.O. Ganki, P.S. & Sub-Division-Khowai,
District-Khowai, Tripura

---- Appellant (s)

Versus

The State of Tripura

----Respondent(s)

For Appellant (s)	:	Mr. Sankar Lodh, Adv. Mr. Subham Majumder, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P.
Date of Hearing & Judgment and Order	:	01.07.2025
Whether fit for reporting	:	NO

**HON’BLE JUSTICE DR. T. AMARNATH GOUD
HON’BLE MR. JUSTICE BISWAJIT PALIT**

Judgment & Order(Oral)

[Dr. T. Amarnath Goud, J]

Heard Mr. S. Lodh, Learned counsel assisted by Mr. S. Majumder,
Learned counsel appearing for the appellant as well as Mr. R. Datta, Learned
P.P. appearing for the respondent.

[02] This is an appeal under Section 374(2) of Cr.P.C. against the
impugned judgment of conviction and sentence dated 02.02.2024 passed by
the Learned Sessions Judge, Khowai Judicial District, Khowai, Tripura in
Sessions Trial (Type-I) 07 of 2020 whereby the Learned Sessions Judge,
Khowai, Tripura convicted by the appellant for committing offence punishable
under Section 302 of IPC and sentenced him to suffer rigorous imprisonment
for life and also to pay a fine of Rs.50,000/- and in default of payment of fine,
he should further suffer simple imprisonment for six months for commission of
offence punishable under Section 302 IPC.

[03] At the time of hearing of argument, Learned counsel for the appellant first of all submitted that that in this case the evidence of the prosecution witnesses suffers from various infirmities as because none of the witnesses of the prosecution could give any clear explanation regarding proper identification of the accused appellant. Furthermore, PW-2 i.e. the wife of the deceased although in her examination in chief stated that she found the accused to fled away from the alleged place of occurrence with dao but during cross examination she stated that she was unable to say as to how her husband was assaulted and how he sustained injury. So, legally there is no scope to place any reliance upon her evidence.

[04] Furthermore, PW-1, Gopal Datta in his examination in chief stated that there was no electricity at the time of alleged occurrence and as such he himself and his mother went to the residence of the deceased with a hurricane but on the other hand, PW-2, Smt. Jhunu Debnath stated that it was moon light with she could identify the appellant i.e. the appellant accused which appears to be contradictory to each other. Furthermore, PW-3, Gopendra Debnath stated that on the alleged day in the night his neighbor Niranjana visited in his house and informed him that Debendra physically assaulted Niranjana but during cross-examination he specifically stated that he did not see the occurrence of offence. So, there is no scope to place any reliance upon his evidence. PW-4, Laxmi Rani Nam Sudra is also a hearsay witness and no reliance can be placed upon his evidence. Similarly, PW-5, Khagendra Nama Das also is a hear say witness who stated that he heard the fact of causing assault to the deceased by Debendra Kunda. Similarly, PW-6, Litan Deb stated that Niranjana was assaulted by some person but who assaulted Niranjana that could not be ascertained from the evidence of said witness. Similarly, PW-7, Dr. Pradip Bhowmik who sent a requisition for conducting postmortem examination over the dead body of the deceased. PW-8, Rajendra Debnath could not identify the accused. He was earlier examined under Section 299 of Cr.P.C. who in his examination in chief as PW-2 stated that he heard from the

wife of the deceased that Debendra alias Debu chopped him by dao. But surprisingly, during cross examination as PW-8 stated that he could not remember what he stated before the Learned Magistrate and also he did not witness the occurrence of offence.

[05] Similarly, PW-9, Dharendra Debnath stated that wife of Niranjana informed him that one Dars killed his nephew. During cross examination he stated that he reached to the house of Niranjana after the incident and he did not witness the occurrence of offence. Similarly, PW-10, Darshahari Jamtia who was earlier examined under Section 299 of Cr.P.C. during examination stated that on 24.04.1999 he was posted as SI of Police as Khowai P.S. and on that day I/C O/C of Khowai P.S. Ajit Kumar Bhowmik received the complaint from Girendra Debnath and registered the case and he identified the complaint petition marked Exbt.1 the printed FIR form marked Exbt.2 and also identified the signature of said witness marked as Exbt.2/1. He conducted investigation of the case and during investigation he visited the place of occurrence and prepared hand sketch map and identified the hand sketch map with index marked as Exbt.3 and 4. Further stated that the accused was absconding on the date of incident for which he could not arrest him.

[06] PW-11, Priya Lal Majumder stated that after completion of investigation he laid charge sheet against Debendra Chandra Kanda @ Dhara. PW-4, Gopendra Debnath in his examination under Section 299 of Cr.P.C. stated about the fact of causing injury to the victim and stated that after ten days his nephew Niranjana Debnath expired at GB Hospital and his two brothers Girendra Debnath and Harendra Debnath expired and Jhunu Debnath told him that one Hindustani person namely some Chanda chopped his nephew. Similarly, PW-6 in his examination under Section 299 of Cr.P.C. stated that he went to the house of the deceased and found him in injured condition. There was heavy bleeding and his wife informed him that somebody chopped him up. PW-7, Khagendra Nama Das in his examination in chief stated under Section 299 of Cr.P.C. Niranjana Debnath was chopped by one Debendra Kanda.

[07] Referring the evidence of those witnesses Learned counsel for the appellant stated that the prosecution could not prove the case beyond reasonable doubt against the appellant but the Learned Court below failed to appreciate the evidence on record properly regarding identification of the accused and also regarding contradictory evidence of only one eye witness PW-2, Smt. Jhunu Debnath i.e. the wife of the deceased. As such, the appellant is liable to be acquitted from the charge of this case.

[08] Learned counsel for the appellant further stated that the prosecution in this case could not prove any motive to sustain the conviction against the appellant and in support of his contention he has relied on a decision of the Hon'ble Supreme Court of India in ***Raja Ram Vs. State of Rajasthan*** reported in **(2005) 5 SCC 272** wherein in Para No.9, Hon'ble the Apex Court observed as under:-

"9. But the testimony of PW 8 Dr. Sukhdev Singh, who is another neighbour, cannot easily be surmounted by the prosecution. He has testified in very clear terms that he saw PW 5 making the deceased believe that unless she puts the blame on the appellant and his parents she would have to face the consequences like prosecution proceedings. It did not occur to the Public Prosecutor in the trial court to seek permission of the court to heard (sic declare) PW 8 as a hostile witness for reasons only known to him. Now, as it is, the evidence of PW 8 is binding on the prosecution. Absolutely no reason, much less any good reason, has been stated by the Division Bench of the High Court as to how PW 8's testimony can be sidelined."

Referring the same, he stated that regarding identification the witnesses of the prosecution gave different statements. Somebody told that Debendra Kunda, somebody told Debu, somebody told Dara and one witness told Hindustani person namely some Chanda. Those witnesses were not declared hostile by the prosecution and as such, in view of the infirmities of the evidence on record the accused needs to be acquitted from the charge of the case. Further, Learned counsel also submitted that prosecution in this case failed to prove the motive behind crime.

[09] Learned counsel further submitted that although the accused was absconded for a prolonged period and for that the prosecution may say that

had he not been guilty then why he has absconded soon after the occurrence of offence. Learned counsel further submitted that in a normal circumstance a prudent man if could know that a case is lodged against him in that case he may abscond to avoid arrest but for his absconsion it cannot be said that he was guilty of offence. In this regard he relied upon another citation of Hon'ble Supreme Court of India in ***Sekaran Vs. State of Tamil Nadu*** reported in ***AIR 2024 SC 397*** wherein in Para No.23, Hon'ble the Apex Court observed as under:-

"23. Although not brought to our notice in course of arguments, it is revealed from the oral testimony of PW-11 that the appellant could be apprehended 3 (three) years after the incident from Puliur road junction in (1 km. away from Ambalakalai) in Kerala after vigorous search. However, abscondence by a person against whom an FIR has been lodged and who is under expectation of being apprehended is not very unnatural. Mere absconding by the appellant after alleged commission of crime and remaining untraceable for such a long time itself cannot establish his guilt or his guilty conscience. Abscondence, in certain cases, could constitute a relevant piece of evidence, but its evidentiary value depends upon the surrounding circumstances. This sole circumstance, therefore, does not enure to the benefit of the prosecution."

Referring the same, he drawn the attention of the Court that on the ground of absconsion it cannot be said that the appellant accused has committed the offence and as such, his appeal would be dismissed. And finally, Learned Counsel urged for setting aside the judgment and order of conviction and sentence delivered by Learned Trial Court below.

[10] On the other hand, Learned P.P. opposed the submission made by Learned Counsel for the appellant and submitted that in this case prosecution has been able to prove the charge before the Learned Trial Court below and the evidence of PW-2 i.e. the wife of the deceased was so clear and convincing that on the basis of her sole evidence there was scope for convicting him. Accordingly, Learned Trial Court below rightly convicted the accused. Learned P.P. further submitted that the submission made by Learned Counsel for the appellant that different witnesses gave different statements regarding identification of the appellant but in this regard the accused appellant in course

of cross-examination of the witnesses of the prosecution did not utter a single word. Furthermore, in course of examination under Section 313 of Cr.P.C. also the accused appellant remained silent in this regard. So, it is clear that the appellant has failed to project any ground to be acquitted from the charge of this case.

[11] Furthermore, in support of his contention, Learned P.P. relied upon one citation of the Hon'ble Supreme Court of India in ***Jafel Biswas and Others Vs. State of West Bengal*** reported in **(2019) 12 SCC 560** wherein in Para No.38, Hon'ble the Apex Court observed as under:-

"38. The learned counsel for the appellant has also contended that prosecution failed to prove any motive of committing the murder. The trial court has elaborately dealt with this submission. Relying on the judgment of this Court reported in State of Haryana v. Sher Singh: (1981) 2 SCC 300, it was held that absence of motive does not disperse a prosecution case if the prosecution succeed in proving the same. The motive is always in the mind of person authoring the incident. Motive not being apparent or not being proved only requires deeper scrutiny of the evidence by the courts while coming to a conclusion. When there are definite evidence proving an incident and eyewitness account prove the role of accused, absence in proving of the motive by the prosecution does not affect the prosecution case. In para 10 of State of Haryana (supra) following was laid down: (SCC p. 303)

"10. The prosecution is not bound to prove motive of any offence in a criminal case, inasmuch as motive is known only to the perpetrator of the crime and may not be known to others. If the motive is proved by prosecution, the court has to consider it and see whether it is adequate. In the instant case the motive proved was apparently inadequate, although it might be possible."

Referring the same, Learned P.P submitted that it is not necessary that in every case prosecution should prove the motive of the crime and here in the case at hand, PW-2 is the only eye witness of the alleged occurrence of offence who very specifically stated the involvement of the appellant and the other witnesses who appeared to the place of occurrence soon after the occurrence specifically stated about the involvement of the appellant and the appellant also by the trend of cross-examination could not dismantle their evidence. So, in such a situation there is no scope to interfere with the

judgment delivered by the Learned Trial Court below and urged for dismissal of the appeal.

[12] We have given conscious hearing of both the sides and perused the evidence on record very carefully. In this case the prosecution was set into motion on the basis of an F.I.R. laid by one Girindra Debnath to O/C, Khowai P.S. on 24.04.1999 and on the basis of that, the case was registered and the I.O. after completion of investigation laid charge-sheet against the appellant. It is on record that the accused could not be apprehended during investigation and as such, the I.O. after completion of the investigation laid charge-sheet against him showing him as absconder. It is also on record that some of the witnesses of the prosecution were examined under Section 299 of Cr.P.C. in absence of the accused. Later on, the accused was arrested and fresh evidence was recorded. Here, in the case at hand, PW-2 is the only eye witness who is the wife of the deceased. Now if we go through the evidence of said PW-2 it appears that in course of her examination in chief she stated that after hearing gagging of her husband she came out from the room on the dead night when she found that the present appellant was running with a dao in his hand and through moonlight she could identify him. And also found that the blood was oozing out from the head of her husband she raised alarm the neighbor Gopal came to her house and he also informed the matter to her father-in-law and she became senseless. Her husband was shifted to Khowai Hospital and from Khowai Hospital her husband was referred to GB Hospital and on the 11th day he succumbed to his injury. And on this issue his father-in-law lodged the case getting all the information but surprisingly during cross, she stated that in her presence her husband was not assaulted and she was unable to say as to how her husband sustained injuries and on raising alarm and after appearance of Gopal she became senseless. Now, since in this entire case she is the only one eye witness of the alleged occurrence. Now, if we carefully go through her examination in chief and cross examination, it appears that she did not see to inflict and cause injury to her deceased husband by the alleged appellant, she

only seen the appellant to flee away along with a dao and through the moonlight she could identify him. Now, if we go through the evidence of PW-1 Gopal Datta who stated that there was no electricity on that point of time and he came to the residence of the victim along with his mother with a hurricane. Meaning thereby, there was dark on that relevant point of time then surprisingly how said PW-2, i.e. the wife of the deceased could identify the appellant, there was no explanation in this regard from the side of the prosecution.

[13] Furthermore, other witnesses of the prosecution gave different statements regarding identification of the accused. Somebody said the name of the accused was Dara, somebody said Dhara, somebody said he was someone Hindustani namely Chanda and somebody said he was Debendra alias Debu. Prosecution could not give any explanation in this regard. Even the said witnesses of the prosecution also were not declared hostile by the prosecution regarding actual identification of the appellant. Furthermore, the said witnesses were also not present to the place of occurrence at the time of alleged occurrence of offence. They only after hearing the incident either from the said of PW-2 i.e. the wife of the deceased namely, Jhunu Debnath or from hearing the same from one Gopal Datta disclosed the name of the appellant to be involved with the alleged crime. Since the evidence of PW-2 appears to be doubtful and prosecution in course of hearing of argument failed to satisfy the Court that there is no scope to disbelieve her evidence and as already stated the witnesses of the prosecution made contradictory statement to each other which also prosecution has been failed to explain at the time of hearing of argument. Thus, it appears to us that Learned Trial Court below at the time of delivery of judgment has failed to appreciate the evidence on record properly. So, just on the basis of absconsion and also just on the basis of contradictory statements of the witnesses of the prosecution it appears to us that it is a fit case where the appellant should be acquitted on benefit of doubt from the

charge of this case. Accordingly, in our considered view prosecution has failed to prove the charge beyond reasonable doubt against the appellant.

[14] In the result, the appeal filed by the appellant is hereby allowed. The appellant is hereby acquitted from the charge levelled against him on benefit of doubt and he is set at liberty. The judgment and order of conviction and sentence delivered by Learned Sessions Judge, Khowai Judicial District, Khowai, Tripura in Sessions Trial (Type-I) 07 of 2020 dated 02.02.2024 is accordingly set aside. The appellant be released from the custody henceforth if he is not involved in connection with any other case.

Send down the record to the Learned Trial Court along with a copy of this judgment.

With this observation, the instant appeal is disposed of.

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

JUDGE

JUDGE

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