

HIGH COURT OF TRIPURA
AGARTALA

Crl.A.(J) 17 of 2024

Shri Mathura Tripura
son of Late Arun Kumar Tripura
of village-Baigonfa Para,
PS: Gandacherra, District: Dhalai, Tripura

---Convict Appellant(s)

Versus

The State of Tripura

---Respondent(s)

For Appellant(s)	:	Mr. Subrata Sarkar Sr. Advocate. Ms. Ayesha Saha Hirawat, Advocate. Ms. U. Singha, Advocate. Mr. A. Jamatia, Advocate.
For Respondent(s)	:	Mr. Rajib Saha, Addl. PP.
Date of hearing and date of delivery of 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. Subrata Sarkar, learned senior counsel appearing for the appellant also heard Mr. Rajib Saha, learned Addl. PP appearing for the state-respondent.

[2] This is an appeal under section 374 of the Code of Criminal Procedure, 1973 against the judgment and order of conviction and sentence dated 21.09.2023 passed by the Ld. Additional Sessions Judge, Dhalai Judicial District, Ambassa, in connection with Case No. ST (Type-1) 16 of 2019 convicting the appellant to suffer life imprisonment (L.I.) along with fine of Rs. 1,00,000/- (rupees one lakh only) payable to the L.Rs of the deceased as compensation (u/s 357(b) Cr.P.C) for 302 IPC in default to suffer further Rigorous Imprisonment (R.I) for a term of 6 (Six) months.

[3] The prosecution story in brief (as per the charge-sheet) is that on 05.07.2018 at around 1500 hours the husband of the complainant namely

Pubanda Tripura (deceased) went to the Gandacherra market for making some purchases. Subsequently around 2330 hours, while the complainant along with her 02 kids were asleep, she heard some noise/ sound from outside her house and upon going outside with a torch she found the dead body of the husband lying on her courtyard with a severe head injury. On hearing her hue and cry, one Jamani Tripura arrived at her house and informed the matter to Gandacherra P.S over mobile. As per the prosecution, the accused Mathura Tripura was the brother in law of the deceased (Pubanda Tripura) and killed him due to personal enmity over the frequent beatings the deceased gave his wife while intoxicated.

[4] After hearing both sides, the learned Court below delivered the judgment and order of conviction and sentence dated 21.09.2023 in the following manner:

41. After carefully listening to and pondering over the opposing arguments advanced by both the Counsels, this Court is of the considered view that the ends of justice would be served appropriately if the accused is sentenced to suffer Life Imprisonment (L.I) along with fine of Rs.1,00,000/- (rupees one lakh) only payable to the L.Rs of the deceased as compensation (u/s 357(b) Cr.P.C) [in default to suffer further Rigorous imprisonment (R.I) for a term of 06 (six) months]. This Court also recommends to the District Legal Services Authority, Dhalai Tripura, Ambassa to decide a reasonable quantum of compensation to be awarded to the LR's of the deceased under the Victim Compensation Scheme (Section 357(A)(1) Cr.P.C). Even though the accused has spent 95 days in detention, no benefit of Set Off can be provided to him as the sentence imposed is not that of a fixed term but rather one of life imprisonment. (Kartar Singh Vs. State of Haryana, AIR 1982 SC 1433).

[5] Being aggrieved by and dissatisfied with the judgment and order of conviction, the present appeal has been preferred by the appellant.

[6] It is contended by the learned counsel for the appellant that it is evident that evidence uncovered against the accused is not convicting being of circumstantial nature and that the prosecution has not been able to discharge its burden of proving the guilt of the accused beyond reasonable doubt. It is further contended that neither “the pointing out of memorandum” nor any “Interrogation Report” of the accused was prepared by the I.O.

[7] Further it is also contended by the learned counsel for the appellant that the only on account of unfortunate death, liability could not be fastended upon the appellant without any admissibe and legal evidence. The prosecution has tried to connect the appellant in crime in question without any eye-witnesses and it is a false and concocted story implicating the name of the convicted person but Ld. Trial court below did not consider this aspect. It is also contended that there exits many lacunas in the process of investigation as well as in the development of the chain of events which creates a doubt in the part of the IO.

[8] The prosecution failed to prove the circumstances. Even the circumstances could not form a complete chain for drawing inference that it was the accused person who killed the deceased. The Ld. Trial Court failed to consider this aspect for which the judgment and order is liable to be set aside.

[9] To support his case, learned senior counsel for the appellant has placed his reliance over the judgment of the apex court on the point of extra-judicial confession in **Subramanya vs. State of Karnatak** reported in (2023) 11 SCC 255. He has placed his reliance in para no. 76 which is reproduced here-in-below.

“76. Keeping in mind the aforesaid evidence, we proceed to consider whether the prosecution has been able to prove and establish the discoveries in accordance with law. Section 27 of the Evidence Act reads thus:

“27. How much of information received from accused may be proved.— Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

[10] On the point chain of circumstantial evidence, learned counsel for the appellant has placed his reliance in the Para 24 of the Hon’ble Supreme Court Judgment reported in (2002)1 SCC 702 titled as **Subhash Chand vs. State of Rajasthan**. The same is reproduced here-in-under:

24. Thus, none of the pieces of evidence relied on as incriminating, by the trial court and the High Court, can be treated as incriminating pieces of circumstantial evidence against the accused. Though the offence is gruesome and revolts the human conscience but an accused

can be convicted only on legal evidence and if only a chain of circumstantial evidence has been so forged as to rule out the possibility of any other reasonable hypothesis excepting the guilt of the accused. In Shankarlal Gyarasilal Dixit's case (supra), this Court cautioned - "human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions". This Court has held time and again that between may be true and must be true there is a long distance to travel which must be covered by clear, cogent and unimpeachable evidence by the prosecution before an accused is condemned a convict.

[11] On the point extra judicial confession, learned counsel for the appellant has placed his reliance in the Para 15 of this High Court judgment delivered in **Crl.A(J) 13 of 2021** titled as **Sri Janardhan Murasingh vs. The State of Tripura**. The same is reproduced here-in-under:

15. Having considered the evidences on record, we do not find any evidence to link the appellants with the alleged murder. None of the witnesses had stated that they had seen any of the appellants assaulting or threatening the deceased, Sukumar Das. Moreover, there is no eye witness to the alleged incident except mere confessional statement of the appellants. Further, it is evident that the appellants were taken into custody by the police on 17.06.2018 after which their statement ought to have been recorded before any Judicial Magistrate but, their confession was recorded before the Executive Magistrate, which is not admissible as per Evidence Act.

[12] On the contrary, learned Addl. PP appearing for the state-respondent has contended before this court that the impugned judgment and order of conviction and sentence dated 21.09.2023 passed by the Ld. Additional Sessions Judge, Dhalai Judicial District, Ambassa, is just and proper and needs no interference from this court. He further prayed to dismiss the appeal of the appellant by confirming the impugned order.

[13] To support his case, learned Addl. PP for the state-respondent has placed his reliance on a judgment of the apex court in **Neeruj Dutta vs State (Government of NCT of Delhi)**, reported in **(2023) 4 SCC 731** where the apex court has observed as follows:

85. In this regard, our attention was drawn to Sat Paul vs. Delhi Administration (1976) 1 SCC 727 ("Sat Paul") which is a case arising under the 1947 Act wherein this Court speaking through Sarkaria, J. has made pertinent observations regarding the credibility of a hostile witness. It was observed in paragraph 30 of the judgment that the terms "hostile witness", "adverse witness", "unfavourable witness", "unwilling witness" are all terms of English law. At Common law, if a witness exhibited manifest antipathy, by his demeanour, answers and attitude, to the cause of the party calling him, the party was not, as a

general rule, permitted to contradict him with his previous inconsistent statements, nor allowed to impeach his credit by general evidence of bad character. It was observed in paragraph 33 that the rigidity of the rule prohibiting a party to discredit or contradict its own witness was to an extent relaxed by evolving the terms “hostile witness” and “unfavourable witness” and by attempting to draw a distinction between the two categories. A “hostile witness” is described as one who is not desirous of telling the truth at the instance of the party calling him, and an “unfavourable witness” is one called by a party to prove a particular fact in issue or relevant to the issue who fails to prove such fact, or proves an opposite fact.

[14] Let us examine some witnesses to adjudicate the matter.

[15] P.W.1, Sri Sibajoy Tripura (30 years/ day labourer) states that around 1 and ½ years ago at around 11.00 p.m upon hearing some noise he came out of his house and saw that his brother-in-law (victim Pubanda Tripura) was lying on the ground in a pool of blood in front of his house. He further states that he informed his village ‘Sardar’ about the same and his brother-in-law (victim Pubanda Tripura) was accordingly taken to Gandacherra Hospital by some villagers, where he was declared dead. Lastly, P.W.1 states that he cannot say how his brother-in-law (Pubanda Tripura/ victim) sustained injuries on his body or who was involved in the said incident.

Cross-examination merely consists of some denials.

[16] P.W.3, Sri Khagendra Tripura (45 years/ Day labourer) has also deposed similar to the previous two witnesses. He states that around 1 and ½ years back at around 11.00 p.m he came out of his house upon hearing some sound and saw that his co-villager namely Pubanda Tripura (victim/ deceased) was lying on the ground in a pool of blood in front of his house. Witness also states that Pubanda Tripura (victim) was taken to Gandacherra hospital where he was declared dead. Like the last two, this witness also states that he cannot say how the victim received injuries on his body or who was involved in the said incident.

[17] P.W.5, Sri. Ratan Kanti Tripura (aged 24 years/ jhum cultivator) has simply deposed that he personally knew the deceased and his wife as they

were his co-villagers, 'his house situated about 200 meters from the house of the deceased. P.W.5 further states that around 2 and ½ years ago one night he heard a hue and cry emanating from the house of the deceased which woke him up. When he went to the spot, he saw the dead-body of Pubanda Tripura with bleeding injuries in the Courtyard. He says he does not know who was involved in this incident. (Cross-examination declined).

[18] P.W.7, Sri. Alad Kumar Tripura (66 years/ jhum cultivation) is a hear-say and seizure witness who states that he personally knew the deceased and his wife as they were his co-villagers. About 2 and ½ years ago he heard (hear-say) that Pubanda Tripura was murdered. Furthermore, P.W.7 states that he does not know how or by whom Pubanda Tripura was murdered.(The said witness was declared hostile and cross-examined by the prosecution).

[19] P.W.8, Sr. Manoranjan Tripura (35 years/ day labourer) states that he initially did not personally know Mathura Tripura or Pubanda Tripura and that the accused Mathura Tripura met him for the first time when he received the summons as a witness and that he has even travelled to the Court today along with accused Mathura Tripura.

[20] P.W.9, Smt. Banga Rani Tripura (38 years/ day Labourer) who is the wife of the deceased (Pubanda Tripura) and the real sister of the accused (Mathura Tripura) has deposed that about 02 years 07 months ago around 12.00 a.m mid-night she came out of her hut upon hearing some sound and found her husband (decease Pubanda Tripura) lying in the courtyard with bleeding injuries on his head. The witness states that she does not know who murdered her husband. She also states that on the following day she lodged a written complaint with the O/C, Gandacherra P.S. (The witness was declared hostile and cross-examined by the prosecution).

Cross-examination by the defence was declined

[21] P.W.10, Sri. Dhannya Das Tripura (50 years/ jhum cultivator) states that he personally knew Pubanda Tripura (deceased), Mathura Tripura (accused) and Bangarani Tripura (wife of the deceased) as they were his co-villagers. The witness has correctly identified his signature on the hand written ejahar, but denies that he wrote the said ejahar in his own hand writing. The said P.W is also a witness to the recording of the disclosure-statement and the seizure list dated 08.07.2018. (The said P.W was declared hostile and cross-examined by the prosecution).

[22] P.W.11, Kirasingh Tripura (48 years/ jhum cultivator) states that he knew the deceased Pubanda Tripura being his co-villager. About 2 and ½ years ago Pubanda Tripura was murdered. But the P.W does not know how he was murdered or by whom. P.W.11 is also a witness to the disclosure statement and the seizure list dated 08.07.2018. He has correctly identified his signatures on the same. (The witness was declared hostile and cross-examined by the prosecution. Cross-examination by the Defence was declined.

[23] P.W.12, Sri. Arun Kr. Tripura (65 years/ Jhum cultivator) states that his permanent residence is at Baigonpha and he presently resides at Baghirath where he works as Jhum cultivator. Furthermore, the witness states that the deceased Pubanda Trpura is his son-in-law and Smt. Banga Rani Tripura is his daughter, accused Mathura Tripura being his son. Witness states that he does not know how Pubanda Tripura died as he was at Bagirath at the time. He says that he only heard from people that Pubanda Tripura was murdered around 11.00/12.00 p.m. (The witness was declared hostile and cross-examination by the prosecution).

Cross-examination by the defence was declined.

[24] P.W.13, Inspector Jatindra Das (48 years) states that on 06.07.2018 he was posted as O/C at Gandacherra P.S when around 02.30 a.m he received a

written complaint from Smt. Banga Rani Tripura (wife of the deceased). Witness further states that he registered the said complaint as Gandacherra P.S case No.2018 GNC 033, dated 06.07.2018, under Section 302 IPC against accused Mathura Tripura and endorsed the case to S.I. Rakesh Debbarma for investigation.

Cross-examination by the defence was declined.

[25] P.W.14, Sri. Tari Mohan Tripura (35 years/ day Labourer) simply states that he does not know anything about this case except that he was acquainted with the deceased Pubanda Tripura being his co-villager.

Cross-examination by the defence was declined.

[26] P.W.15, Smt. Uspari Tripura (40 years/ housewife) is the wife of the accused Mathura Tripura who states that she does not know who killed the said Pubanda Tripura. She also states that she knows nothing else about this case.

Cross-examination by the defence was declined.

[27] P.W.16, Amit Kumar Karmakar (DCM, Govt. Service) states that on 08.07.2018 he was posted as DCM at the office of the SDM, Gandacherra and that as per the instruction of the SDM he went to the Gandacherra PS where the O/C recorded the Disclosure Statement of the accused Mathura Tripura in his presence along with that of other witnesses. The witness states that the accused confessed to his crime vide the said disclosure statement. Thereafter, the witness went to the place of occurrence accompanied by the accused, police personnel and other witnesses where the weapon of offence was got recovered by the accused.

Cross-examination by the defence only consists of some denials.

[28] Upon careful perusal of the evidence on record, it is clear that the prosecution has failed to establish the guilt of the accused beyond a reasonable doubt. None of the prosecution witnesses (PWs) were present at the scene when

the alleged offense took place. Their testimonies, including those of P.W.1, P.W.3, P.W.5, P.W.7, P.W.9, P.W.11, P.W.12, P.W.14, and P.W.15, consistently indicate that they arrived at the spot after the incident, discovering the deceased in a pool of blood, or heard about the incident from others. They explicitly stated their inability to identify how the victim sustained injuries or who was involved in the incident. P.W.9, the wife of the deceased and sister of the accused, also stated she did not know who murdered her husband. Several witnesses, including the wife and father of the deceased, were declared hostile by the prosecution, further undermining the prosecution's case.

[29] Regarding the discovery evidence, we have meticulously considered the provisions of Section 27 of the Evidence Act, which states:

"Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

[30] While P.W.16, Amit Kumar Karmakar, deposed about the recording of a disclosure statement and subsequent recovery of the weapon of offense, the overarching principle in criminal jurisprudence demands that incriminating evidence be treated with utmost caution, especially in cases resting on circumstantial evidence.

[31] It is well-settled law that an accused can only be convicted on legal evidence, and only if a chain of circumstantial evidence has been so forged as to rule out the possibility of any other reasonable hypothesis excepting the guilt of the accused. This Court has consistently held that there is a significant distance between "may be true" and "must be true," a distance that must be covered by clear, cogent, and unimpeachable evidence by the prosecution before an accused can be condemned a convict.

[32] In the present case, the evidence presented by the prosecution falls short of establishing a complete and unbroken chain of circumstances necessary to conclusively prove the involvement of the accused. The lack of direct evidence from any eyewitness to the incident, coupled with the general ignorance of the material witnesses regarding the perpetrator, creates significant doubt in the prosecution's narrative. Therefore, given the deficiencies in the prosecution's case and the absence of clear and unimpeachable evidence, the benefit of doubt must be extended to the accused.

[33] As such, we are compelled to conclude that the trial court's judgment is based on a misappreciation of the evidence and the settled principles of criminal law. The benefit of the doubt, a cornerstone of our criminal justice system, must be extended to the accused.

[34] Therefore, the appeal is allowed, and the impugned judgment and order of conviction and sentence dated 21.09.2023 passed by the Ld. Additional Sessions Judge, Dhalai Judicial District, Ambassa, in connection with Case No. ST (Type-1) 16 of 2019 is set aside. The appellant, Mathura Tripura, is hereby acquitted of all charges and is to be set at liberty forthwith, if not required in any other case. As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed. A copy of this order be furnished to the concerned jail authority at the earliest.

Send down the LCRs forthwith.

B.Palit, J

Dr. T. Amarnath Goud, J

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