

**HIGH COURT OF TRIPURA
AGARTALA
CRLA NO.21 OF 2024**

Shri Asish Kanti Saha,
S/o Late. Monmohan Saha, resident of Town Sukumar Coloney,
P.S.- Birganj, Amarpur, Gomati District.

.....Applicant- Appellant(s)

Versus

1. The State of Tripura through the Public Prosecutor, High Court of Tripura.

2. Shri Koushik Das,
S/o, Shri Gagat Ch. Das, resident of Arabinda Palli(Fishery road),
P.S.- Birganj, Amarpur, Gomati District.

3. Shri Sankar Banik,
S/o. Shri Ratan Banik, Resident of Jolaibari,
P.S.- Baikhora, Belonia, South Tripura.

..... Respondent(s)

For the Appellant(s)	: Mr. Somik Dey, Sr. Advocate. Ms. A. Chakraborty, Advocate. Mr. P. Chakraborty, Advocate. Mr. Rajib Saha, Amicus Curiae.
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For the Respondent(s)	: Mr. P.K. Biswas, Sr. Advocate. Mr. S. Kar Bhowmik, Sr. Advocate. Mr. R. Datta, P.P. Mr. R. Nath, Advocate. Mr. J. Das, Advocate. Mr. E.L. Darlong, Advocate. Mr. N. Debnath, Advocate. Mr. S. Bal, Advocate. Ms. P. Das, Advocate. Mr. P. Biswas, Advocate. Mr. J. Rahaman, Advocate.
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Date of hearing and delivery of
Judgment & Order : 18/03/2026.

Whether fit for reporting : YES/NO.

**HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA
J U D G M E N T & O R D E R (O R A L)**

T. AMARNATH GOUD(J)

1. This present appeal is directed against the judgment and order dated 24.08.2023 passed by the learned Sessions Judge, Gomati District, Udaipur in S.T. No. 34 of 2015, whereby the accused persons were acquitted of the charges framed against them. By the impugned judgment, the learned trial court acquitted accused Koushik Das from the charges under Sections 364/202 of the Indian Penal Code and Sections 302/201/34 of the Indian Penal Code, acquitted accused Sankar Banik from the charges under Sections 302/325/149 of the Indian Penal Code, and also acquitted the other accused-persons.

2. The prosecution case, in brief, is that on 05.11.2013, the informant lodged an FIR before Nutanbazar Police Station alleging that on 03.11.2013, accused-Koushik Das came to his residence and persuaded him to allow his son, namely Prasenjit Saha, to accompany him to Nutanbazar for attending Kali Puja. Though initially reluctant, the informant ultimately permitted his son to go along with the said accused. It is the further case of the prosecution that on the following day, telephonic conversation took place with the deceased, who assured that he would return. However, thereafter his mobile phone was found switched off and he did not return home. The informant later came to learn that the accused persons had allegedly kidnapped and detained his son, and subsequently the dead body of the victim was found near a pond. On the basis of the said complaint, a case was registered and investigation was taken up, which culminated in submission of charge-sheet against the accused persons under various provisions of law.

3. The case thereafter proceeded in accordance with law. Initially, charge was framed and the matter was committed to the Court of Sessions. At a subsequent stage, accused-Koushik Das was discharged;

however, the said order of discharge was set aside by the High Court in an earlier proceeding, with a direction to frame appropriate charges. Thereafter, fresh charges were framed against the said accused under Sections 364/202 of the Indian Penal Code and subsequently additional charges under Sections 302/201/34 of the Indian Penal Code were also framed. During the course of trial, the prosecution examined as many as 53 witnesses. After completion of evidence and examination of the accused persons under Section 313 of the Code of Criminal Procedure, the learned trial court, by judgment dated 24.08.2023, acquitted all the accused persons.

4. Aggrieved thereby, the appellant has filed this appeal seeking the following reliefs:-

“I) Issue Notice upon the respondents and each one of them to show cause as to why the leave application under sub-section (4) of Section 378 of the Code of Criminal Procedure shall not be granted against the order passed by the learned trial judge on 24.08.2023 in ST case No.34 of 2015 between the State of Tripura, Prosecution and Shri Koushik Das and 5 others acquitting the accused persons from the charges;

II) Call for records; and

III) After the parties be pleased to grant the prayer of leave to appeal under sub-section(5) of Section 378 of the Code of Criminal Procedure;

I) Admit this appeal;

II) Call for records;

III) Issue Notice upon the respondents and each one of them to show cause as to why the appeal shall not be allowed; and

VI) After hearing the parties be pleased to allow this appeal;”

5. Ms. A. Chakraborty, learned counsel appearing for the appellant contended that the learned trial court failed to properly appreciate the evidence on record. It was argued that the evidence of PW-20 clearly establishes that she witnessed the quarrel and assault on the deceased and, therefore, her testimony ought to have been relied upon. It was further contended the deceased was last seen in the company of accused -Koushik Das

and no explanation has been offered by the said accused regarding the circumstances leading to the death. It was thus submitted that the chain of circumstantial evidence stands established and the learned trial court erred in acquitting the accused persons.

6. Per contra, Mr P.K Biswas, learned Sr. counsel assisted by Mr. R. Nath, learned counsel, Mr. P. Biswas, learned counsel, Mr. J. Rahaman, learned counsel and Mr. S. Kar Bhowmik, learned Sr. counsel assisted by Mr.E.L. Darlong, learned counsel and Mr. S. Bal, learned counsel submitted that an appeal against acquittal cannot be entertained in a routine manner unless the findings of the trial court are perverse or wholly unreasonable. It was submitted that the learned trial court conducted a full-fledged and meticulous trial wherein as many as 53 witnesses were examined, and upon proper appreciation of evidence, the trial court arrived at a finding that the prosecution failed to prove the case beyond reasonable doubt. It was further contended that no specific role has been attributed to any particular accused in causing the death of the deceased and, therefore, the benefit of doubt has rightly been extended in favour of the accused persons. It was thus prayed that the appeal be dismissed.

7. Mr. Rajib Saha, learned Amicus Curiae appointed by this Court, rendered valuable assistance and submitted that the prosecution case suffers from inconsistencies and lacunae. It was contended that although several witnesses were examined, their evidence does not conclusively establish the guilt of the accused persons under Section 302 of the Indian Penal Code. It was further submitted that even though there is some evidence indicating a quarrel near the place of occurrence, it is not clear as to which accused inflicted the fatal injury, what the exact sequence of events was, and whether the deceased was killed first and thereafter thrown into the pond or otherwise. It was also pointed out that the presence of multiple accused persons and the absence of clear attribution of overt acts create serious doubt in the prosecution case.

According to the learned Amicus Curiae, the chain of circumstantial evidence is incomplete.

8. Heard and perused the evidence on record.

9. We appreciate the assistance rendered by Mr. Rajib Saha, learned Amicus Curiae, who was appointed by this Court to argue the matter. Upon hearing his submissions, and considering the same, in all fairness he has submitted that there are certain laches on the part of the prosecution inasmuch as the case has not been proved beyond reasonable doubt. From the evidence of the witnesses, including the defacto-complainant and PWs 20, 21 and 28, and also upon their cross-examination, nothing transpires to conclusively establish that the accused persons have committed the offence punishable under Section 302 of the IPC. Though PW-28, in his cross-examination, stated that accused Sankar Banik, respondent No.3 threw a brick at the deceased-Prasenjit, the same does not lead to a definite conclusion that he alone caused the death, particularly when more than one accused person was present at the place of occurrence. The evidence further reveals that the witness saw a quarrel taking place near the pond from a distance, but it is not clear as to which of the accused committed which specific act leading to the death of the victim.

10. There are several unanswered issues, including as to who initiated the quarrel, who retaliated, the nature of the injuries sustained, and whether the deceased was killed and thereafter thrown into the pond, and if so, by whom. These material aspects remain unestablished by the prosecution. However, this Court also places on record its appreciation for the able manner in which the learned counsel for the appellant, Ms. A. Chakraborty, a young member of the Bar, has conducted the case, this being her first criminal matter before this Court.

11. In view of the above and considering the submissions advanced by the learned Amicus Curiae, this Court is convinced that this is a fit case where benefit of doubt ought to be extended to the accused persons.

Accordingly, the judgment and order dated 24.08.2023 passed by the learned Sessions Judge, Gomati District, Udaipur in Sessions Trial No. 34 of 2015 is hereby affirmed and the appeal stands dismissed.

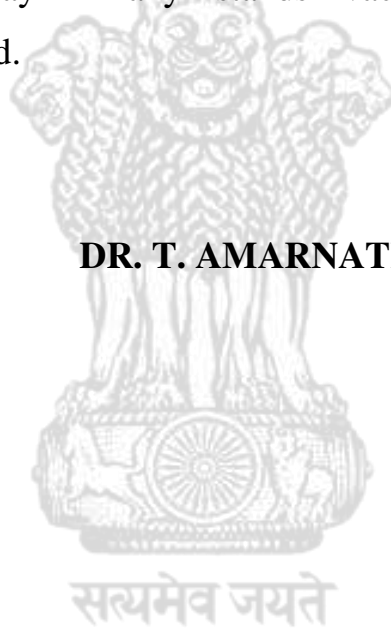
12. The bail bonds of the accused persons, if any, shall stand discharged in accordance with law.

13. The High Court Legal Services Authority is directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand only) to Mr. Rajib Saha, learned Amicus Curiae, towards his professional fees.

14. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.

S. DATTA PURKAYASTHA, J

DR. T. AMARNATH GOUD, J



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