

**HIGH COURT OF TRIPURA
AGARTALA**

CRL.REV.P. NO.36 OF 2006

Shri Babul Mia Maisan,
S/o Late Abdul Khalek Maisan,
of Village Srimantapur,
P.S. Sonamura,
District- West Tripura.

.... **Petitioner.**

-- Vrs --

- 1. The State of Tripura;**
- 2. Abdul Hasham @ Abul Hasham,**
S/o Lt. Sayed Ali of
Village Bejimara;
- 3. Abdul Kashem,**
S/o Lt. Sayed Ali of
Village Bejimara;
- 4. Siraj Mia Choudhury,**
S/o Alek Hasan Chowdhury of
Village Bejimara;
- 5. Jahangir Hossain,**
S/o Alfu Mia of village-
Bejimara;
- 6. Alfo Miah,**
S/o Kurban Ali of
Village- Bejimara;
- 7. Quidris Mia**
S/o Kajim Ali of
Village Bejimara;
- 8. Siddik Mia,**
S/o Sujat Ali of
Village- Bejimara;
- 9. Jasimuddin,**
S/o. Fajal Mia of
Village-Bejimara;

10. Idrish Majumder,
S/o Ali Ashab of
Village-Bejimara;

11. Anuar Hossain @ Anar Ali,
S/o Anu Mia of village-Bejimara;

12. Jheru Mia @ Jalu,
S/o Abdul Jabbar of
village-Bejimara;

13. Shain Mia
S/o Rashid Mia of village-Bejimara;

14. Bajlur Rahaman Chowdhury @ Bajlu
S/o Alek Hasen Chowdhury of
Village-Bejimara.

**All of P.S. Sonamura,
District- West Tripura.**

... Respondents.

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the Petitioner : Mr. P.K. Biswas, Sr. Advocate,
Mr. P. Majumder, Advocate.

For the Respondent No.1 : Ms. S. Deb(Gupta), Advocate.

For the Respondent Nos.
2 to 14. : Ms. N. Guha, Advocate.

Date of hearing : **09.02.2015.**

Date of delivery of
Judgment & order. : **21. 02.2015.**

Whether fit for reporting : **No.**

JUDGMENT & ORDER

This revisional application under Section 397 read
with Section 401 of Cr.P.C. is directed against the judgment

and order of acquittal dated 10.01.2006, passed by learned Addl. Sessions Judge, Sonamura, West Tripura in Sessions Trial No.15(WT/S) of 2005 where-under the learned Addl. Sessions Judge acquitted the accused-respondent Nos. 2 to 14 from the charges framed against them under Section 148 and Section 302 read with Section 149 of IPC.

2. Heard learned Sr. counsel Mr. P.K.Biswas assisted by learned counsel Mr. P. Majumder for the petitioner; learned counsel Ms. S. Deb (Gupta) for the State-respondent No.1 and learned counsel Ms. N. Guha for the respondent Nos. 2 to 14.

3. Prosecution case is that on 18.07.2004, at about 2-30/3-00 p.m. Abdul Khalek Maisan was on way to his house at village Srimantapur from Bejimara riding a bicycle and when he reached near Kal Chowmohani of Bejimara, the accused persons namely (1) Abul Hussain, (2) Abdul Kasham, (3) Siraj Mia Chowdhury, (4) Bajlu Rahaman Chowdhury, (5) Jahangir Hussain, (6) Jasimuddin, (7) Idris Majumder, (8) Chiddik Mia, (9) Jalu Mia, (10) Alfu Mia, (11) Anwar Hussain alias Anar Ali (Dealer), (12) Idris Mia & (13) Sahin Mia armed with 'ram-dao', bomb and fire arms etc. attacked him and assaulted him causing serious injuries and as a result he fell down from his bicycle and after committing the offence the accused persons fled away and the neighbouring people shifted Abdul Khalek

Maishan with a rickshaw to the Fire Brigade Station from where he was taken to Sonamura hospital and in the hospital he was declared dead.

4. P.W.17, Babul Mia Maishan, S/o Abdul Khalek Maisan lodged the FIR in writing on 18.07.2004 at about 20-15 hours and accordingly Sonamura P.S. Case No.20/2004, under Sections 148, 149 and 302 of IPC was registered and after investigation police submitted charge-sheet against all those 13 accused persons named in the FIR for commission of offence punishable under Sections 148,149 and 302 of IPC.

Cognizance was taken on the basis of the police report and thereafter on commitment of the case to the court of learned Addl. Sessions Judge, charges were framed against accused respondent Nos. 2 to 14 for the offence punishable under Sections 148,149 and 302 of IPC to which they pleaded not guilty and claimed to be tried.

5. In course of trial, prosecution examined 25 witnesses and also proved the FIR, seizure list and seized materials etc.

6. After closure of the prosecution evidence, accused persons were examined under Section 313, Cr.P.C. and in their turn, they declined to adduce any defence evidence. Defence

case so far ascertained from the trend of cross-examination of the prosecution witnesses and from examination of the accused persons under Section 313, Cr.P.C. is that of denial of the allegation against the accused persons and it is further suggested that they have been falsely implicated due to political rivalry.

7. Learned Addl. Sessions Judge at the conclusion of trial, passed impugned judgment dated 10.01.2006 acquitting the accused persons on benefit of doubt against which no appeal was preferred by the State and the aggrieved informant Babul Mia Maishan preferred the present revisional application challenging the judgment and order of acquittal passed by the learned Addl. Sessions Judge.

8. It is submitted by learned Sr. counsel, Mr. Biswas that P.Ws 3, 4, 11,17 and 22 are the eye witnesses of the occurrence. They all made consistent statements about the occurrence and specifically stated that accused Jasim Uddin, Idris Majumder and Jalu alias Jharu Mia inflicted the fatal blows on the person of deceased Abdul Khalek Maishan and that other accused persons also assaulted him when he fell down on the road and such statements of those witnesses corroborated each other in a cogent and consistent manner which leaves no room to disbelieve their evidence. He has also

submitted that medical evidence corroborated the evidence of those eye witnesses and it is not disputed that Abdul Khalek Maisan died a homicidal death being assaulted on 18.07.2004 at about 2-30/3-00 p.m. at Bejimara Kal Chowmohani. While it is proved that Abdul Khalek Maishan died a homicidal death and while it is on record that there are witnesses of the occurrence, the trial Court would appreciate the evidence in a positive manner and would punish the accused persons but the trial Court disbelieved them with a finding that they are relative witnesses and so, reliance cannot be placed on their evidence. He has also submitted that the evidence of eye witnesses i.e. P.Ws 3, 4, 11, 17 and 22 has been corroborated by the evidence of hostile witnesses i.e. P.Ws 1 and 8 especially that part of their earlier statements which are marked as Exhibit-1 and 5 respectively. There leaves no room of suspicion regarding the occurrence if the evidence is carefully scrutinized and appreciated. Learned Sr. counsel, therefore, prayed for setting aside the judgment passed by the learned trial Judge and also prayed for remanding the case to the trial Court for appreciating the evidence afresh and to pass a judgment according to law.

9. Learned State counsel Ms. S. Deb (Gupta) has submitted that the evidence on record *per se* has not been properly appreciated by the trial Court and so it is a fit case to

remand it back to the trial Court to reconsider the evidence and to pass a judgment afresh.

10. Learned counsel Ms. N. Guha on the contrary has submitted that the alleged eye witnesses P.W.s 3, 4, 11,17 and 22 for the first time coming before the Court made incriminating statements against the accused persons. In their earlier statements recorded by I.O. under Section 161, Cr.P.C. as well as in the FIR lodged by P.W.17 there was no such incriminating statements and so, the trial Court after having proper appreciation rejected their evidence and recorded an order of acquittal. Further referring to Exhibits A, B, C & D i.e. the part of previous statements of P.Ws 4,11,19 and 22 respectively which has been proved by I.O., learned counsel submitted that those witnesses were not at all in or near the spot to witness the occurrence and that they might come to the place of occurrence some time after the incident was occurred and they did not see the occurrence at all. She has also referred to Exhibit-E i.e. a part of previous statement of P.W.23 and submitted that P.W.23 reached the spot before any other witnesses and at that time, the alleged eye witnesses were not on the spot. While all the alleged eye witnesses developed the story and made new statement for the first time before the Court that they have seen the occurrence, those witnesses cannot be believed and therefore, the trial Court rightly

recorded an order of acquittal on benefit of doubt. This Court in exercise of its revisional jurisdiction need not interfere in the judgment and order passed by the trial Court acquitting the accused persons since there is no infirmity in the judgment passed by the trial Court.

11. While exercising revisional jurisdiction this Court is to see the correctness, legality and propriety of the judgment/order passed by the inferior Court and the regularity of the proceeding before such inferior Court. This Court is not required to re-appreciate the evidence unless it is alleged that the judgment passed by the trial Court suffers from perversity and that the trial Court arrived at a finding based on no evidence or that inadmissible evidence has been considered by the trial Court.

12. Abdul Khalek Maishan died a homicidal death on receipt of multiple injuries on 18.07.2004 and it is alleged that the accused persons inflicted the injuries assaulting Abdul Khalek Maishan on the road near Kal Chowmohani at Bejimara while he was on way to his house from Bejimara Panchayat Office by riding a bicycle. P.W.12, Dr. Ratan Chakraborty was the Chairman of the Medical Board who conducted the postmortem examination. In his deposition he stated -----

“ On external examination of the deceased the following injuries were found.

1) Abrasion measuring 5 cm X 3 cm in left shoulder in midscapular line about 3 cm below behind the clavicle.

2) An incised wound starting from right T.M. joint towards right and up to the back of neck and in the mid line about 7 cm below the back of skull.

On examination of cranium and spinal canal at clean looking lacerated wound measuring 5 cm X 3 cm in right temporal area of scalp, skull beneath the wound was intact. The membrane and the brain and spinal cord was intact.

On examination of the thorax it was found that the walls, ribs and cartilages were intact. The plaurae was congested, lyrings and trachoea were intact, right and left lungs were congested, pericardium as intact. Heart was empty and the Jugular vein and carotid artery on right side were cut.

On examination of the abdomen the walls, peritoneum and mouth were found intact. The mucosa was congested and contained semi digested food particles, mucosa of small intestine was also found congested and containing party digested food particles. Mucosa of the large intestine was also congested and fecal matters.

The liver, spleen, kidneys were congested. Small amount of urine was present in the bladder and the organs of generation was in normal size and shape.

On examination of the muscles, bones and joints one clean looking lacerated wound masuring 8 cm X 6 cm was found in the posterior aspect of left fore-arm about 5" below left elbow joint.

There was no disease or deformative, fracture or dislocation.

The injury No.2 found in external examination started from right T.M. joint and ran towards right without tailing till midline of the back of neck. The underlying vertebrae (C-2,C-3) were cut. Jugular vein and carotid artery on the right side were also cut.

In the opinion of board the cause of death of the deceased was due to cardio respiratory failure following irreversible haemorrhagic shock from the wounds. All the wounds were ante mortem, the weapon were sharp edged heavy object, the death was homicidal in nature and time since the death was 12 to 24 hours.”

13. There is nothing material in the cross examination of the witness to discard his evidence and so it is proved that Abdul Khalek Maishan received four serious injuries on his person and died a homicidal death.

14. The accused persons contended that they were innocent and they were not involved in the alleged killing of Abdul Khalek Maishan and that they had been subsequently involved in the case because of political rivalry.

15. Since it is contended on behalf of the petitioner that the evidence on record has not been properly appreciated, I have gone through the evidence on record to consider as to whether the trial Court properly appreciated the evidence or not and whether there is any perversity in the appreciation of evidence. Out of the witnesses examined, according to the petitioner P.Ws 3,4,11,17 and 22 are the eye witnesses of the occurrence and let us first have a glimpse to the material part of evidence of those witnesses to consider as to whether there is any perversity in the appreciation of evidence.

16. P.W.17 is the son of victim deceased Abdul Khalek Maishan and he set the law in motion by lodging FIR. According to the prosecution, he is an eye witness. The FIR lodged by him has been proved by P.W.6, scribe of the FIR and it is marked as Exhibit-4. P.W.17 proved his signature at the bottom of the FIR, marked as Exhibit-4/2. In the FIR he stated that on 18.07.2004 at about 2-30/3-00 p.m. his father Abdul Khalek Maisan was on way to his house riding a bicycle from Bejimara and when he reached near Bejimara Kal Chowmohani, the accused-respondents, noted on the top of the FIR, in a gang, armed with deadly weapons like 'ramdao', bomb and fire arms, attacked Abdul Khalek Maishan causing serious injuries and as a result, he fell down from bicycle and succumbed to death at the place of occurrence itself. On hearing hue and cry, people reached to the place of occurrence and the accused persons fled away. His younger brother namely Selim Miah Maishan and Khokan Maishan witnessed the said incident. Since his brother fell ill and he was busy with other members of the family, there was delay in lodging the FIR.

A bare reading of the FIR makes it abundantly clear that the informant is not an eye witness of the occurrence, he might have learnt about the incident from others, lodged the

FIR and according to him his younger brothers Selim Miah Maishan (P.W.18) and Khokan Miah Maishan (P.W.19) were the eye witnesses of the occurrence.

17. In total contradiction with the FIR, P.W.17, the informant in his deposition stated that seeing the accused persons coming from east to west, armed with 'dao', 'lathi' etc. he entered into the house of Ali Hossain and from there he found all the accused-respondents. He further stated that within a short time, the accused-respondents returned from the west and while going towards east, they attacked his father Abdul Khalek Maishan who was returning home by riding bicycle at Kal Chowmohani. Jasim Miah hurled a 'dao' blow which fell on the left hand of his father and Idris Majumder gave a blow with a rod on the head of his father. His father fell down from bicycle and then Jharu Miah gave a 'dao' blow and thereafter all the accused persons i.e. the accused-respondents started beating his father left and right. Hearing hue and cry neighbouring people assembled there and the accused persons fled away.

In cross examination he admitted that he did not specifically state in the FIR that Jasim Mia hurled a 'dao' blow which fell on the left hand of his father and Idris Majumder gave a blow with a rod on his head and when he fell down, Jharu Mia gave a blow with 'dao' and then the other accused

persons assaulted his father. Since the informant i.e. P.W.17 in his deposition made statement in total contradiction of what he has stated in the FIR, implicit reliance on his evidence cannot be put and in my considered opinion, the trial Court rightly did not put reliance on the evidence of P.W.17.

18. P.W.3 in his deposition stated that on 18.07.2004 at about 3/3-30 p.m. after casting his vote in the Panchayat election he was returning home. When he came near the house of Abdul Haque he heard hue and cry and found some people running towards the west with 'dao', 'lathi', etc. By the time he crossed the house of Abdul Haque, Khalek Miah Maishan came from his behind on a bicycle and crossed him. When Khalek Maishan went a little ahead near Kal Chowmohani, Bejimara, those who went towards west came back and Khalek Miah Maishan was confronted by them. Abdul Jashim gave a 'dao' blow which fell on the hand of Khalek Maishan. In the meantime, Idris Majumder gave a blow with a rod to Khalek Miah Maishan as a result of which Khalek Miah Maishan fell down on the ground. When he fell down on the ground Jharu Miah gave a blow to Khalek Miah Maishan with a 'cheni' at the back of the neck. By that time many of the miscreants also assaulted Khalek Miah Maishan with 'dao', 'lathi' etc.

In his cross examination, the incriminating part of the statement made by him was confronted with his previous statement and that part of the statement was not stated by the witness while he was examined by the I.O. Therefore, the evidence of this witness has been shaken in cross examination and so implicit reliance, correctly was not placed by the learned trial Judge.

19. P.W.4 stated that on 18.07.2004 at about 3/3-30 p.m. she went to Kal Chowmohani to fetch water and at that time, she found Babul Miah Maishan going towards west. At the same time 30/40 persons armed with 'dao', 'lathi' etc. were going towards west and seeing them Babul Miah Maishan went to a house. Those persons came back again and in the meantime Khalek Miah Maishan came on a bicycle and seeing him Jasim Uddin a member of those 30/40 persons gave a 'dao' blow and Idris Majumder gave a blow with a 'lathi' as a result Khalek Miah Maishan fell on the ground. Jharu Miah gave another 'dao' blow. The other people also started assaulting Khalek Miah Maishan. She started crying and Aminul Islam, Maharm Ali, Alfu Miah Maishan and others came. Salim Miah and Khokan Miah also came and they took Khalek Miah Maishan in a rickshaw towards the hospital.

In cross examination she stated that Khalek Miah Maishan was the cousin of her father. The entire part of the incriminating statement of the witness made in her examination-in-chief was confronted with her earlier statement recorded by I.O. and such statement was not there. So while this witness also made different statement at different stage, the learned trial Court could not put implicit reliance on the evidence of this witness which is completely shattered in cross-examination.

20. P.W.11 Jakir Hossain in his deposition stated that after casting vote in Bejimara Panchayat Office he was returning home through the main road. When he just crossed the house of Abdul Haque, he found 30/40 persons armed with 'dao', 'lathi' etc. running towards west through a short-cut road. In the meantime, Khalek Miah Maishan came from behind and went towards Kal Chowmohani. By the time Khalek Miah Maishan reached Kal Chowmohani, the persons who went towards west came back and Khalek Miah Maishan fell in front of them. Jasim alias Jasim Uddin gave a 'dao' blow which fell on the hand of Khalek Miah Maishan. By that time accused Idris Majumder hit Khalek Miah Maishan with a rod at the back of his neck as a result of which he fell down from the bicycle. At that time Jharu Miah gave him a 'dao' blow. As soon

as Khakel Miah fell on the ground Abul Kasem, Abdul Hasem, Alfu Miah, Jahangir Hossein, Idris Miah also started assaulting Khalek Miah Maishan left and right. He ran away from there and hide himself by the side of the kitchen of Apurba Das. One Hasina Begam was at Kal Chowmohani at that time and she also raised alarm. People assembled there. Siddique Miah, Maharam Ali and his brother Alfu Miah and others took injured Khalek Miah Maishan to the hospital by rickshaw.

The evidence of this witness also shattered in the cross examination. The incriminating part of the statement of this witness was confronted with his earlier statement and it is recorded that he did not make those part of incriminating statement to the I.O. So, in my considered opinion, the trial Court correctly did not put implicit reliance on the evidence of this witness.

21. P.W.22 in her deposition stated that the deceased Khalek Miah Maishan was her grand-father and he was murdered on 18.07.2004 at about 3/3-30 p.m. at Kal Chowmohani, Bejimara. She further stated that she saw accused Jasim Miah gave a 'dao' blow to her grand-father and then Idris Majumder hit him with a 'lathi'. When his grand-father fell down on the ground accused Jasim Miah hurled a 'dao' blow and then all other accused persons assaulted him.

In her cross examination she stated that she was carrying 9 months pregnancy at that time and she denied that she was in the house at that time. The earlier part of her statement recorded by I.O. that she heard sound of assault and heard the people saying that Abdul Khalek Maishan had been killed at Kal Chowmohani and that part of her statement marked as Exhibit-D. She was further confronted with her previous statement in respect of the incriminating part of her statement made by her in examination-in-chief and those statement were not found in her previous statement. So, in my considered opinion, the trial Court rightly did not put implicit reliance on her evidence also.

22. Though the informant P.W.17 in the FIR stated that P.W.s 18 and 19, the younger brothers of P.Ws 17, were eye witnesses of the occurrence but in their deposition they stated that they went to the spot after the incident and they have stated that they found the accused persons fleeing away. But that part of the statement that they found the accused persons fleeing away were confronted with their earlier statement and such statement were not there in the earlier statement. The trial Court, therefore, could not put any reliance on any particular witness or any particular set of witnesses. Moreover, P.W.12, the Autopsy Surgeon clearly stated that he found four

injuries on the dead body of Abdul Khalek Maishan whereas the material witnesses of the prosecution stated that all the accused persons assaulted Abdul Khalek Maishan left and right and Abdul Khalek Maishan died on the spot on receipt of multiple injuries. The medical evidence, therefore, has not supported the prosecution case as a whole and hence, the trial Court observed that there appears reasonable doubt. Further on perusal of Exhibit A, B, C and Exhibit-D i.e. previous statement of P.Ws 4, 11, 19 and 22 respectively which has been proved by I.O. it appears that those witnesses who claimed to be eye witnesses might not be there in the spot at the time of occurrence.

23. P.Ws 1 and 8 were declared hostile by the prosecution. Since the other alleged eye witnesses developed the story and could not be believed the previous statement of P.Ws 1 and 8 which has been marked as Exhibit-1 and Exhibit-5 respectively are of no use. Out of the other witnesses of the prosecution P.Ws 2, 14, 20, 21 and 24 were tendered by the prosecution and the trial Court also observed that out of them P.Ws 2 and 21 are the residents of the locality adjacent to the place of occurrence but they have not been examined by the prosecution. Other witnesses are formal witnesses and are not of so much of importance.

24. A criminal trial proceeds with a presumption of innocence of the accused until the charges are proved. After trial when the trial Court records an order of acquittal, the presumption of innocence multiplies. It is the settled law that appellate Court should not ordinarily interfere or reverse the judgment of acquittal of the trial Court unless there are compelling and substantial reasons for doing so. It is the settled principle that if two views are possible, the one in favour of the accused has to be preferred. In the present case all the material witnesses of the prosecution are found to have stated the material incriminating fact for the first time before the Court. In their previous statement recorded by I.O., they did not make the incriminating part of the statement which they stated in their examination-in-chief. The evidence of the material eye witnesses have been shaken in their cross examination. The trial Court, therefore, adopted a possible view that prosecution witnesses cannot be believed in view of making new statement in their examination-in-chief and further the possibility of their presence at the scene of occurrence were found to be doubtful and so I think this Court in exercise of the power of revision should not interfere in the finding of the trial Court.

25. In view of the discussions made above, I find no infirmity or perversity in the judgment passed by the trial Court and the revisional application, therefore, stands dismissed.

26. Send back the L.C. records along with a copy of this judgment.

JUDGE