HIGH COURT OF TRIPURA
AGARTALA

Crl.A(J)No. 43 of 2019

Sajal Das **……Appellant**

Versus

The State of Tripura **…….Respondent**

For the Petitioner(s) : Ms. R.Purkayastha, Advocate

For the Respondent(s) : Mr. S.Ghosh, Addl.PP

B E F O R E

HON'BLE MR. JUSTICE S.TALAPATRA
HON'BLE MR.JUSTICE S.G.CHATTOPADHYAY

J U D G M E N T & O R D E R (ORAL)

17/06/2020
(S.Talapatra, J)

[**1**] Heard Ms. R. Purkayastha, learned Legal Aid Counsel appearing for the appellant as well as Mr.S.Ghosh, learned Additional Public Prosecutor appearing for the State

[**2**] The appellant was charged under Section 302 of the IPC for committing murder of his father namely Subal Chandra Das on 03.01.2012 at about 9 pm at Purba Durlabh Narayan under Sonamura Police Station. After regular trial he has been convicted under Section 302 of the IPC and sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.5000/- with default stipulation. It has been also observed that the detention that has been undergone by the appellant shall be set off under Section 428 of Cr.P.C. from the substantive imprisonment. The said judgment and order of conviction and sentence are challenged in this appeal.

[**3**] The said conviction under Section 302 of the IPC has been sentenced by the judgment dated 21.09.2015 delivered in case No. S.T.44(WT/S) of 2013 by the Additional Sessions Judge, West Tripura, Sonamura.

[**4**] The genesis of the prosecution case can be located in the written complaint [Exhibit-3] filed by one Sankar Das [PW-1], the full blooded brother of the appellant revealing that on 03.01.2012 at about 9 p.m his younger brother, Sajal had killed his father namely Subal Chandra Das aged about 63 years at the approach of vegetable garden (the agricultural land) at Killa Mura. At the time of fleeing away he was caught by the people of the locality. Based on the said complaint, Sonamura PS Case No.03/12 u/s 302 of the IPC was registered and taken up for investigation. Having completed the investigation, the final police report under Section 173(2) of the Cr.P.C. was submitted sending up the appellant to face the trial for committing murder of his father. After the police report was committed to the jurisdictional sessions court, the additional Sessions Judge, herein after referred to as the trial judge, framed the charge as stated before, to which the appellant pleaded innocence and claimed to be tried in accordance with the law. The prosecution, in order to substantiate the charge, adduced as many as 9 witnesses [PWs 1 to 9] including the informant, the post mortem doctor and two witnesses who held him while he was fleeing [PWs 2 and 3] and the Investigating officer. That apart, 6 documentary evidences [Exhibit-1 to 6] including the post mortem examination report [Exhibit-6] was adduced in the evidence by the prosecution. After recording the prosecution evidence, the appellant was examined under Section 313 of Cr.P.C. to have his response toward the incriminating materials and

circumstances. On examination of the statement as recorded under Section 313, Cr.P.C, it appears that in response to the question that did you have anything to say in respect to the case, the appellant has stated that since his father used to scold him for his work he had committed murder and at the time of commission that he has claimed that he was not mentally sound. But on the other query he has denied his involvement in the offence. However, during the said examination, he has admitted whatever the PWs 2 and 3 have stated in the trial. Having appreciated the arguments placed in the trial, the trial Judge returned the finding of conviction as stated and sentenced him to life imprisonment with fine.

[**5**] Ms.R.Purkayastha, learned legal aid counsel has submitted that from the testimony of PW1, Sajal Das it would be apparent that Sankar Das on returning home from the fair and not seeing his younger brother (the appellant) he again went out of the home to call him. At that time his father was murdered. Then he has stated in the trial that one Monoranjan Das [PW-2] and another Rahul Das [PW-3] saw his younger brother (Sajal Das) to flee away from that vegetable 'khet' and they detained his brother and found the dead body of his father lying at vegetable 'khet'. Thereafter, they raised alarm and the local people rushed in. In front of the local people including PWs 2 and 3, the appellant confessed that he had murdered his father by throttling in their vegetable garden at the time when he came to take him back to home. The occurrence had been immediately reported to the police by one Sukumar Barman, now deceased and the police arrived at the place of occurrence, prepared the inquest report [Exhibit-1] and seized the chaddar (shawl) of his brother from the vegetable garden. He identified the seizure list

[Exhibit-2] as a witness of seizure. In acknowledgment his presence at the time of seizure, he put his signature on the seizure list. Even the Chaddar was produced in the trial and marked as Exhibit-MO1. He has admitted the written ejahar. In the cross examination, he has categorically denied the suggestions that PWs 2 and 3 did not state anything and after committing the murder of his father the appellant did try to flee away from the spot or they did thus catch and detained him there. The other suggestions made by the defence to discredit his testimony have been denied. PW2, Monoranjan Das is one of the important witnesses of the prosecution. He has further stated that on 03.01.2012 when he was returning from the fair with his nephew Rahul Das [PW-3], they noticed someone was running away through the vegetable khet (garden) from west to east, but could not identify that person. Thereafter, they entered in the vegetable garden to see why that person was running away but found the appellant sitting there on a divider of the field. They asked Sajal (the appellant) about his conduct why he was running away. At that point of time they discovered the dead body of Subal Das (the deceased) 60 cubits away from the spot where they met Sajal Das. They asked him about the death of Subal Das. He has admitted that while his father was returning from the fair, he had caught hold of his father in the vegetable garden and forced him to lie on the ground. Thereafter, he had indiscriminately assaulted his father sitting over his chest and also gagged his mouth by Chaddar and killed his father by strangulation. In response to the alarm raised by PWs 2 and 3, local people came there and subsequently the police arrested the appellant. He identified his signature on the seizure list of Chaddar. In the cross examination, his testimony remain unscathed.

[**6**] PW3, Rahul Das has replicated the same narration of facts in the trial and there is no deviation at all. Thus, there emerged context when both the witnesses PWs 2 and 3 were telling their truth in the trial. However, PW4, Chittaranjan Das, a villager, who appeared at the place of occurrence after registering the hue and cry and he has stated that before him the appellant had stated that he had forcibly made his father lying on the ground and thereafter he assaulted his father indiscriminately with fists and blows, sitting over his chest and finally strangulated as "his father was not giving him any landed property by partition." He identified the inquest report [Exhibit-1] whereupon he had signed as the witness. He has also not deviated from his statement during the cross examination and he denied the suggestion made to him contrary to what he has stated in his examination in chief.

[**7**] PW5, who has been stated to be a witness was residing in close proximity of the deceased.PW5, Dharmaraj Das, has stated that he heard PWs 2 and 3 raising alarm from a vegetable garden and he appeared there. He has further stated that Sajal Das had stated him that he murdered his father. After his reaching at the place of occurrence, the police arrived there and they carried out the inquest procedure. PW5 signed on the report [Exhibit-1]. In the cross examination, his statement was not dented. He has stated that Chittaranjan Das [PW-4] and himself rushed to the spot after hearing the hue and cry raised by PWs 2 and 3. PW5 has further stated in the trial that he had stated the police that the appellant confessed before them that he had forcibly made his father lie on the ground and assaulted him indiscriminately with fists and blows and sitting over

his chest. Thereafter he had strangulated his father to death. The other suggestion as made to PW 5 was also denied.

[**8**] PW6, Kishore Kumar Sarkar, a constable from the Sonamura Police Station escorted the dead body to the morgue for purpose of post mortem examination.

[**9**] PW7, Partha Munda, a Sub-inspector of Police was at the relevant point of time, posted at the Sonamura Police Station. He has stated that first he got a telephonic information on 04.01.2012 at about 00.05 a.m. He entered the said information in the station diary being GDE No. 139 dated 04.01.2012. He has stated that Sankar Das [PW1] handed over the appellant to the police and he had identified the spot where Subal Das was murdered by the appellant. In his presence Chaddar (shwal) was seized. PW7 had conducted the inquest and prepared the report (Exhibit-1). He has admitted the report in the evidence. PW7 has identified the seizure list by which he seized the said Chaddar [Exhibit-3] and also that Chaddar was identified as Exhibit MO-1.He has thereafter given a recital of how he has carried out his investigation including the preparation of site map with index, recording of the statements of the witnesses and sending the dead body to the morgue for post mortem examination. He has referred those documents but he has denied all the suggestions made against his statement in the examination in chief.

[**10**] PW8, Jahar Debbarma, completed the investigation when PW7 was transferred out of the said police station. He had collected the post mortem report and filed the charge sheet.

[**11**] PW9, Doctor Payel Bhattacharjee, carried out the post mortem examination on 04.01.2012 at about 01.00 p.m at Sonamura

Community Health Centre over the dead body of Subal Das(the deceased). During the post mortem examination, she found the following injuries which were ante mortem:

[1] Multiple nail scratches over ears (Both) and nose and neck.

[2] Swelling of 4cm x 3cm x 2cm with bleeding point (dried off) present over back of scalp.

[3] Little amount frothing present at left angle of mouth.

[4] Tongue tightly compressed between teeth.

She has opined thereafter that all findings are suggestive of death due to asphyxia for strangulation. Rigor mortis had started to form. The death according to the post mortem doctor had occurred 12-18 hours before the post mortem examination had commenced. The post mortem report was identified by PW9 and marked as Exhibit-6(as a whole).

[**12**] Ms. Purkayastha, learned counsel having taken us to the thick of the evidence, has made an attempt to show that there was no premeditation or preparation for killing Subal Das (the deceased). According to her it was out of passion and sudden fight without any sort of premeditation, the appellant dealt with the fatal blows or caused strangulation of his father. During the examination under Section 313 of the Cr.P.C. the appellant's remorse is available while he has stated that he has killed his father. But all through, even under Section 313 of the Cr.P.C he has stated that he is not involved in the murder, but at the same time during the said examination, he has admitted to have confessed before the PWs 2 and 3. Therefore, according to Ms. Purkayastha, learned counsel, considering the exception as espoused in Section 4, this over action cannot be brought within the definition of murder under Section 300 of the IPC. It is

culpable homicide not amounting to murder within the category of offence covered by Section 304 of the IPC.

[**13**] Mr.S.Ghosh, learned additional public prosecutor appearing for the state in his fairness has submitted that there is no evidence of premeditation nor any preparation by the appellant for killing his father. It is out of the heat of passion he committed the said act.

[**14**] Having appreciated the submissions we have no hesitation in our mind to hold that all attributes are not available in the transactions as carried out by the appellant and as such we are inclined to interfere with the finding of conviction under Section 302 of the IPC and accordingly it is done and ordered. The said conviction is set aside. The order of sentence as passed as consequence thereof, under Section 302 stands interfered with and set aside.

[**15**] However, as we have already indicated, there are adequate evidentiary materials to convict the appellant under Section 304 part I of the IPC, as the intention to kill has surfaced from the nature of assault, without framing any charge in exercise of power as conferred upon this court by Section 222 of the Cr.P.C. Accordingly we convict the appellant under Section 304 part I of the IPC. Having considered all the extenuating and the mitigating circumstances the appellant had projected in the trial court and upon hearing, we sentence him to suffer 10 years rigorous imprisonment with fine of Rs.2000/- and in default of payment of fine, he should suffer simple imprisonment of 1(one) month.

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[**16**] It is needless to say that the detention that the appellant has suffered during the investigation of the trial and in the post trial period shall be set off from the substantive imprisonment.

In the result, the appeal stands partly allowed.

Send down the LC records.

JUDGE **JUDGE**

HIGH COURT OF TRIPURA
सत्यमेव जयते

Saikat Sarma