THE HIGH COURT OF TRIPURA
AGARTALA

CRL A(J) 52 OF 2017

Sri Jyotish Debbarma,
S/o late Renu Kumar Debbarma of
Padmakumar Para, Guliraibari,
PS- Bishramganj, District-Sepahijala,
Tripura.

…. A**ppellant**

– Vs –

The State of Tripura,
Represented by the Secretary,
Home Department, Govt. of Tripura,
P.O. Agartala, District-West Tripura.

….Respondent

BEFORE
HON'BLE MR. JUSTICE ARINDAM LODH

For the appellant : Mr. M.K.Roy, Advocate

For the respondent : Mr. R. Datta, Public Prosecutor.

Date of hearing and date of delivery of Judgment & Order : **10.12.2020**

Whether fit for reporting : **NO**

Judgment & Order (Oral)

This appeal arises out of the judgment and order of conviction and sentence dated 22.08.2017, passed by the learned Additional Sessions Judge, Court No.2, West Tripura, Agartala in Case No. ST (T-1) 85 of 2016 whereby and whereunder the appellant

had been sentenced to suffer rigorous imprisonment for a period of 5(five) years along with fine of Rs.10,000/- with default stipulation.

3. Heard Mr. M.K. Roy, learned counsel appearing for the appellant as well as Mr. R. Datta, learned Public Prosecutor appearing for the State-respondent.

4. As projected by the learned court below, the prosecution case may be reproduced hereunder:

"The factual backdrop of the case in a nut shell is that on 19.01.2016 at about 1955 hours the informant Smti. Ratna Debbarma, W/O. Late Buddha Debbarma, Village and Post Office - Guliraibari under Bishramganj Police Station, District - Sepahijala Tripura, lodged a written Ejahar with the Officer-In-Charge, Bishramganj Police Station alleging that on 17.01.2016 in the mid-night, her husband visited the house of the accused Jyotish Debbarma to attend an invitation to enjoy "Makar Sangkranti". Jyotish Debbarma (herein after called the accused) is the elder brother of Buddha Debbarma (herein after called the deceased), the deceased husband of the informant. On the fateful night at about 0030 hours, while the deceased was returning home from the house of the accused, suddenly a hot altercation took place in between the accused and the deceased and the accused attacked the deceased with a lathi and struck severe blows over his head and other parts of his body. As a result, the said

Buddha Debbarma sustained severe bleeding injury on his head and other parts and as a result of such injury the deceased fell down on the courtyard of the accused and became unconscious. Upon hearing the hue and cry, the complainant rushed to the spot and found her husband lying in the courtyard of the accused with a bleeding injury over his head and other parts of his body. The complainant along with her mother and other relatives shifted the deceased immediately to Bishalgarh Hospital at about 0200 hours and on the next day morning he was referred to AGMC and GBP Hospital and during treatment on 19.01.2016 at about 0707 hours Budha Debbarma succumbed to injuries at AGMC and GBP hospital. The informant specifically alleged that the accused Jyotish Debbarma murdered her husband."

5. On the basis of the aforesaid complaint, the Officer-in-Charge of Bishramganj P.S. had registered a case as Bishramganj P.S. Case No.03/2016 under Section 302 of IPC against the accused-appellant Jyotish Debbarma. Investigation was carried out. During the course of investigation inquest over the dead body of the deceased was prepared. The investigating officer had recorded the statements of available witnesses under Section 161 of CrPC, seized the weapon of offence, prepared the hand sketch map of the scene of the occurrence. After being satisfied with the process of investigation, the

investigating officer had submitted charge-sheet before the Court under Section 302 of IPC.

6. After receipt of the copy of the charge-sheet, learned Sub-Divisional Judicial Magistrate, Bishalgarh, WestTripura, being prima facie satisfied with the materials brought on record, took cognizance of the offence punishable under Section 302 of IPC and committed the case to the Court of learned Sessions Judge, West Tripura, Agartala since it was triable by the Court of Sessions.

7. Having received the records, the case was transferred to the court of learned Additional Sessions Judge, Court No.2, West Tripura, Agartala for trial and accordingly, learned Addl. Sessions Judge had framed charge against the accused Jyotish Debbarma for commission of offence under Section 302 of IPC. The contents of the charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

8. In course of trial, the prosecution had examined as many as 12 witnesses and introduced 10 documents. The weapon of offence i.e. bamboo stick having taken into proof was marked as Exbt.M.O.1. The prosecution also brought on record some portions of the 161

CrPC statements made by PW-1 and PW-12, which were marked as Exbt.3A, 3B and 3B/1.

9. After conclusion of recording evidence the accused was examined under Section 313 of CrPC to which he denied all the incriminating materials as surfaced against him by the prosecution witnesses and pleaded his innocence. However, he denied to adduce any evidence on his defence.

10. Learned trial Court before taking up the hearing of the case had framed following points for determination:

> "***Points for determination***:-
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> *(1).Whether the accused Jyotish Debbarma on 17th January, 2016 at about 1230 hours caused grievous hurt to Buddha Debbarma by means of a Bamboo Stick over his head and other parts of his body with an intention of causing such bodily injury as is likely to cause death and consequently Buddha Debbarma died at GBP Hospital on 19.01.2015 at about 0945 hours?*
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> *(2).Whether the accused had the intention to kill his brother Buddha Debbarma on the alleged date, time and place?*

11. Being aggrieved by and dis-satisfied with the impugned judgment and order of conviction and sentence, the convict has preferred the instant appeal.

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12. Challenging the findings and decision arrived at by the learned Addl. Sessions Judge, Mr. M.K. Roy, learned counsel appearing for the appellant has strongly argued that there is no eye witness to the incident and the case is totally bent on the circumstantial evidence, but, the prosecution has miserably failed to complete the chain of circumstances. According to Mr. Roy, learned counsel for the appellant, the prosecution case is circumscribed by the evidence adduced by PW-1, Smt. Ratna Debbarma who is the wife of the deceased brother of the appellant. Mr. Roy, learned counsel has drawn my attention to the contents of the FIR which has been exhibited as Exbt.1/2 in his attempt to convince the court that PW-1 while deposing before the Court has substantially shifted from her previous statements and there was serious contraction between the statements she made in the FIR and the evidence she adduced before the Court. Mr. Roy, learned counsel has further submitted that weapon of offence was not recovered and inquest was not properly done. He has urged that on the occasion of 'Makar Sankranti' the deceased being invited to the house of his elder brother had consumed huge quantity of liquor along with others and at one stage he lost control over his body and fell down when his head was hit with hard stump of a tree resulting his death due to severe bleeding. Mr. Roy, learned

counsel to substantiate his argument on this point has urged this Court to believe the statement of PW-3, Sri Jyotilal Debbarma who has deposed that on 17.01.2016 his brothers and their wives were invited and accordingly Buddha Debbarma and his wife attended their house on the occasion of 'Makar Sankranti' and they had dinner besides cake and pastries with his brothers and their family members. He further stated that they were 10 (ten) brothers and Buddha Debbarma was his 3rd younger brother. He further stated that all of them being their family members, except his wife and Ratna Debbarma consumed havoc country made liquor. In that meanwhile, when it was at about 12:30 hours and being late, most of his brothers and their wives had left his house and went back to their respective houses. The most vital part of his evidence was that when he stated that Buddha Debbarma, the deceased while returning home losing control over his body followed by havoc consumption of liquor, suddenly by falling over the stumps of a tree, received bleeding injuries over his head and he was taken to the hospital. The said witness was declared hostile by the prosecution.

13. Mr. Roy, learned counsel has further submitted that the accused while examined under Section 313, CrPC also answered in the same tune when he was asked by question no.12. On the basis of

aforesaid factual and legal aspects, Mr. Roy, learned counsel has urged this Court to acquit the appellant, being an innocent.

14. On the other hand, Mr. Ratan Datta, learned Public Prosecutor appearing for the State-respondent defending the judgment and order of conviction and sentence passed by the learned trial Court has argued that the prosecution has been able to prove the case beyond reasonable doubt. Learned P.P. has submitted that there is no material deviation in the statement which PW-1 has deposed before the trial court than that of the statements she made in the FIR. Mr. Datta, learned P.P. has pointed out that PW-1 herself did not write the FIR and it was written by PW-12.

15. Learned P.P. has further taken me to the evidence of PW-7 and the statements of this witness, according to learned P.P. is an extra judicial confession for the reason that the accused himself had confessed the fact of assault to deceased brother Buddha Debbarma immediately after the occurrence and it is very much relevant to decide the present case whether it is a case of conviction or acquittal.

16. PW-7, Sri Gayacharan Debbarma has deposed that on 17.01.2016 in the mid night, he woke up as called by Jyotish Debbarma, the appellant himself and after coming out of his hut, he

found the appellant was standing in his court yard with a bamboo stick. The said witness further deposed that on his query, the appellant told him that out of a quarrel with his younger brother Buddha Debbarma, he assaulted him with the said bamboo stick and as a result of which said Buddha Debbarma received bleeding injury. PW-7 advised the appellant to take his brother to the hospital. Accordingly, Jyotish Debbarma left his house. He further deposed that he heard sound from the side of his pond. On the next day morning, he found a bamboo stick was floating in his pond when he recovered the same. According to the said witness this was the same lathi (stick) which he saw in the hand of the appellant on the preceding night. Police had seized it and he put his signature in the seizure list. He identified the said lathi which was marked as Exbt.M.O.1.

16.1 Learned P.P. has also put much reliance on the deposition of PW-11, Smt. Purneswari Debbarma who deposed that the deceased was invited to the house of his mother to take dinner on that night. She further deposed that after dinner, while her daughter and son-in-law were returning back to her house there was a quarrel between Buddha Debbarma and Jyotish Debbarma and upon hearing the sound of chaos, she went to their house and found Buddha Debbarma lying on the ground with a bleeding injury over his head. At that instance,

according to this witness, her daughter i.e. PW-1 told her that her husband was beaten by Jyotish Debbarma in presence of other family members with a bamboo stick. Buddha Debbarma was shifted to the Bishramganj hospital and thereafter he was taken to GB hospital where he died after two days of the incident.

17. Now let us examine whether based on these witnesses, like PW-1, PW-3, PW-4, PW-7 and PW-11 the conviction of the appellant can be sustained or not.

18. I have perused the contents made in the FIR. True, it is, that in the FIR, PW-1 stated that "*there was an uproar in course of the incident and afterwards, I, on knowing about the incident, went there and saw that my husband was lying with bleeding injuries*." At the time of adducing evidence, she deposed that on the fateful night they were invited by her brother-in-law Jyotish Debbarma to celebrate the auspicious occasion of "Makar Sankranti' in his house. Thereafter, she deposed that after dinner at about 12.30 am, while they were returning home, a quarrel took place between the wife of Jyotish Debbarma and his mother-in-law and while her husband Buddha Debbarma asked them to stop quarrel and interfered, then, her elder brother-in-law i.e. the appellant suddenly became furious and attacked her husband being

armed with bamboo stick and assaulted him indiscriminately with the said bamboo stick.

18.1 She further deposed that due to such assault her husband had received severe bleeding injury and suddenly had fallen down on the courtyard of the house of her elder brother-in-law and she became senseless. She further deposed that in that meanwhile, upon hearing the chaos in the house of her elder brother-in-law, adjacent neighbours appeared there besides their family members and her husband was shifted to Bishramganj hospital at about 2.00 am in a precarious condition and wherefrom on the following day, he was shifted to GBP Hospital. She further deposed that her elder brother-in-law Sudhan Debbarma prepared the *ejahar* as per her version interpreting the same in Bengali and he also read over the written *ejahar* to her interpreting the same from Bengali to Kakborok and being satisfied that it was prepared correctly as per her version, she put her signature. PW-1 had identified her signature in the *ejahar* which was marked as Exbt.1. She also identified her signature in the inquest report which was marked as Exbt.2.

18.2 During cross examination the fact of invitation to the house of Jyotilal Debbarma on the fateful night was not disputed.

However, PW-1 denied that her husband had taken any liquor and that he lost control over his body following consumption of liquor and fell down on a root of a big tree. At the time of cross-examiation, PW-1 had volunteered that "*it is not a fact that I did not witness the occurrence".* She further volunteered that they had no enmity with her elder brother-in-law Jyotish Debbarma. It was also denied that since her husband met with an unfortunate incident she implicated her brother-in-law Jyotish Debbarma on false pretext with an ulterior motive.

19. Now, if the evidence of PW-1 is cumulatively read with the evidence of PW-3, then, it would be revealed that presence of deceased Buddha Debbarma and his wife i.e. PW-1 in the house of Jyotish Debbarma, the appellant, herein are corroborated. This witness has further stated that except his wife and PW-1 all his family members had taken liquor on that night. PW-3 has further stated that when it was 12:30 am most of their brothers and their wives had left his house and went back to their respective houses. Subsequently, he stated that Buddha Debbarma, the deceased while returning home, losing control over his body suddenly fell down on the hard root of a tree receiving bleeding injury. If I carefully scrutinize the statements of PW-3, then, it emanates that PW-3 did not specifically state

whether PW-1 had left the company of her deceased husband Buddha Debbarma. He only stated that most of his brothers and their wives had left their house. In my opinion, though this witness was declared hostile but the presence of Ratna Debbarma at the scene of occurrence cannot be ruled out in absence of specific statement from PW-3 in this regard.

20. Now, coming to the evidence of PW-7, it is revealed that both PW-7 and Jyotish Debbarma were at the same house at the time of occurrence. It was the appellant who called PW-7 to come out of his hut and stated to him that out of a quarrel with his younger brother Buddha Debbarma, he assaulted him with the lathi which was in his hand and Buddha Debbarma received bleeding injury. This witness has further stated that he advised the appellant to take his brother to the hospital for treatment. This witness has found the bamboo stick in his own pond and he identified this bamboo stick as the weapon of offence which was used in assaulting the deceased. The police has recovered this bamboo stick and seized the same by preparing a seizure list. The witness had put his signature on the seizure list and on being identified his signature was marked as Exbt.4/3. PW-7 had also identified the said bamboo stick in the Court which was marked as Exbt. M.O.1.

21. Now remains the fall out of the medical evidence which has been adduced by Dr. Anamika Nath, PW-4. According to Dr. Nath, during autopsy test, she found the following injuries:

> *(1) One lacerated wound measuring 4.5 cm x 0.5 cm X scalp deep on frontal region of head on midline, 10 cm above the naxion was surrounded by an area of abrasion measuring 4.5 cm x 3.9 cm,*
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> *(2) One haematoma measuring 4 cm x 3 cm over the scalp on the left temporal region. After dissection, extravasation of blood was found on the frontal and right side temporo-parieto-occipital region. There was bruising on the right sided temporalis muscle. One linear fracture measuring 8 cm in length was found present over the right sided frontal bone.*
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> *Extradural haemotoma was found present on right temporo-parietal region. After removal of the vault of the skull, sub arachoroid hemorrhage was found on both cerebral hemisphere. Sub dural hemorrhage was present on the base of both cerebral hemisphere. Sub dural haemorrhage was found present over the cerebellum the age of injury was 2-3 days old."*

22. Having meticulous scrutiny of the nature of injury suffered by the deceased Buddha Debbarma, it transpires that the said injuries do not suggest the story of the defence that Buddha Debbarma suddenly fell down on the ground and hit the root of a tree and suffered bleeding injury. As such, I repel the story as the defence has tried to project. In my opinion, the statement of PW-1 as made in the

ejahar and her evidence before the court, suggests minor discrepancy and it is settled law that minor discrepancy here and there shall not in any way discard the prosecution case in whole when there is other substantial evidence in support of the prosecution case. Moreover, PW-1, Ratna Debbarma being a rustic tribal lady did not scribe the *ejahar* herself. It was written by someone and in that case, there were ample scopes of some miscommunication and misunderstanding.

23. PW-3, though had declared hostile, in my opinion, has substantially supported the case of the prosecution in regard to the presence of Ratna Debbarma, PW-1, the wife of the deceased. From his evidence, it is surfaced that though some of his brothers and their wives had left, but, Buddha Debbarma and his wife did not leave the house as he had seen them when he woke up being called by the appellant.

24. Further, in my opinion, the statements of PW-7 may be treated as extra-judicial confession being made immediately after the incident by the appellant himself. Defence did not take the plea that there was any enmity between PW-7 being the brother of the appellant in absence of such enmity, I do not find any ground to doubt the credibility of the statements of PW-7 and this witness appears to be

scored as trustworthy and credible. More so, this statement of PW-7 is relevant and admissible in evidence under Section 6 of the Evidence Act.

25. I do not find any material that PW-7 had tried to embellish or improvise the story in any manner whatsoever in course of deposition before the court. I have given my thoughtful consideration to the submission of learned counsel for the appellant that the inquest report was not prepared in accordance with law and there was no certificate given by the police officer to prepare the inquest report. In my opinion, this is a mere irregularity committed by the police officer out of his ignorance of law and this irregularity cannot be the ground to throw out the entire prosecution case.

26. For the reasons, as discussed and stated above, I am of the view that the prosecution has been able to prove its case beyond reasonable doubt that it is the appellant who has assaulted his younger brother but without any intimidation and having held so, I do not find any infirmity in the findings and decision arrived at by the learned Court below while convicting and sentencing the convict-appellant under Section 304 Part-II of IPC.

27. Accordingly, the judgment and order of conviction and sentence as imposed by the learned Additional Sessions Judge, Court No.2, West Tripura, Agartala in case No. ST(T-1) 85 of 2016 on 22.08.2017 are hereby upheld and affirmed.

28. The bail bond of the convict-appellant Jyotish Debbarma is hereby cancelled and he is directed to surrender before the learned trial Court within two weeks from today to serve out the remaining period of sentence.

29. Needless to say, learned trial Court shall take all necessary steps in accordance with law to suffer the remaining period of sentence in terms of the judgment, if the appellant Jyotish Debbarma is not surrender within the aforesaid stipulated period. It is made clear that period of imprisonment which already suffered by the appellant during the course of investigation and trial shall be set off.

The appeal, accordingly, stands dismissed and disposed of.

Send down the LCRs.

JUDGE

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