HIGH COURT OF TRIPURA
AGARTALA
CRL.A.(J)78 of 2017

Sri Motilal Sen,
son of late Mahendra Sen,
resident of Uttar Ramchandraghat,
Novoday para, P.S. Khowai,
District : Khowai, Tripura

---- Appellant(s)

Versus

The State of Tripura,
represented by the Secretary
Home Department, Government of Tripura,
Civil Secretariat, New Capital Complex,
P.O. Kunjaban, Agartala, West Tripura

---- Respondent(s)

For Appellant(s)	:	Mr. A.K. Pal, Adv.
For Respondent(s)	:	Mr. S. Ghosh, Addl. P.P.
Date of delivery of Judgment and Order	:	20.05.2020
Whether fit for reporting	:	NO

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

Judgment & Order(Oral)

(Talapatra, J)

Heard Mr. A.K. Pal, learned counsel appearing for the appellant as well as Mr. S. Ghosh, learned Addl. P.P. appearing for the state.

2. The appellant was charged for committing murder of one Swapan Das on 17.07.2013 at about 7.10 p.m. and after due trial, he has been convicted under Section 302 of the IPC by the judgment dated 24.07.2014 delivered in Case No.S.T.01(T-1) of 2014 by the Additional Sessions Judge, Khowai, West Tripura and pursuant to the said judgment, the appellant has been sentenced to suffer life imprisonment and to pay fine of Rs.5000/- with default stipulation.

3. The genesis of the prosecution case is rooted in the oral complaint [Exbt.5] filed by one Prabir Barman [PW-9]. On 17.07.2013 at about 7/7.30 p.m. the appellant chopped one fish seller namely Swapan Das who was doing his business in the Lal Tilla bazar with fish-cutting dao. The appellant was the former sweeper of the said market. After chopping the deceased with dao, the appellant fled away towards Nath Mandap situated in a nearby place of the market and left that dao somewhere in that area. On the basis of the said oral complaint, Khowai P.S. Case No.100 of 2013 under Section 302 of the IPC was registered and taken up for investigation. On completion of the investigation, the final police report was submitted sending up the appellant for facing the trial as the materials as collected during the investigation had primafacie established the commission of offence by the appellant. After the

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police papers were committed to the court of Additional Sessions Judge, Khowai [the jurisdictional court] the charge was framed under Section 302 of the IPC as stated before. The appellant denied the charge and claimed to be tried in accordance with law.

4. It may be noted here that the prosecution adduced as many as twenty six witnesses, of whom, seven are the eye witnesses. That apart, fifteen documentary evidence including the postmortem examination report [Exbt.11] and the report from the Tripura State Forensic Science Laboratory [TSFSL] [Exbt.10] were admitted in the evidence. After recording the evidence of the prosecution, the appellant was examined under Section 313 of the Cr.P.C. when he had denied the evidence stating that those are concocted. Since, no defence witness or evidence has been led, the Sessions Judge having appreciated the evidence on record, returned the finding of conviction observing categorically as under:

> **"Evidence of the eye witnesses and the evidence of the witnesses who were present nearby and in the surrounding places near the scene of crime clearly and unequivocally established the fact that the accused heinously and brutally killed the victim Swapan Das taking 'dao' from the deceased by giving arbitrarily blow by said 'dao' belonging to victim Swapan Das. The deposition of the eye witnesses and the witnesses who were nearby the incident are found consistent to each other and proved the prosecution case.**
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> **From the cross-examination of the prosecution witnesses the defence failed to bring out a single piece of material contradiction or any other defence story that could led the innocence of the accused. In other word, prosecution successfully proved the alleged charge of brutal murder of the deceased Swapan Das by the accused Motilal Sen by large**

number trustworthy witness who had not been rebutted by the defence by cross in any manner.

From the above observation, we have reached in the shore and have no other alternative but to land on clear finding that the accused Motilal Sen murdered Swapan Das.

From the findings arrived above, what emerges here is that the prosecution is successful to prove the alleged fact of causing death of Swapan Das by the accused Motilal Sen and as such the accused Motilal Sen is found guilty for commission of offence punishable under Section 302 of IPC."

5. Mr. A.K. Pal, learned counsel appearing for the appellant has persuaded us to re-appreciate the evidence that has been recorded in the trial inasmuch as according to him, it would be established from such re-appreciation that the Trial Judge has failed to make the assessment of the evidence fairly. If the fair assessment were done, the appellant would have been discharged from the charge. But that did not happen. Mr. Pal, learned counsel having taken us to the thick of the evidence has submitted that there are two set of witnesses. One set of witness even though claimed to have been present in the Lal Tilla market area at the time when the occurrence allegedly took place, but they did not see who assaulted the deceased, Swapan Das in the market. There is other set of witnesses who had categorically stated that they had seen that the appellant dealing blows by a fish cutting dao in presence of other witnesses. Hence, Mr. Pal, learned counsel has emphatically stated that the appellant be acquitted from the charge

under Section 302 of the IPC having considered the chaos unleashed in the market, when the alleged crime took place.

6. Mr. S. Ghosh, learned Addl. P.P. appearing for the state has categorically submitted that PWs-1,6,9,11,16 & 22 are the eye witnesses and what they had disclosed to the Investigating Officer remain rebutted. According to those eye witnesses, they had seen directly that the appellant had been indiscriminately chopping the deceased. Initially, they were afraid, but later on, they had raised the alarm and responding to that other business men who were present in the Lal Tilla Bazar on 17.07.2013 at about 7/7.30 p.m. gathered. One of them, Shri Pramir Barman [PW-9] has made the statement to the police officer namely Ashish Kumar Deb [PW-23] about the said occurrance. Mr. Ghosh, learned Addl. P.P. has further submitted that even though, TSFSL report [Exbt.10] was of no avail but the postmortem examination report [Exbt.11] had corroborated the statements made by those eye witnesses. As such, there cannot be any earthly reason to interfere with the judgment of conviction. Hence, no interference is called for.

7. For appreciation of the submissions made by the learned counsel for the parties, we have revisited the records of evidence including documentary evidence. From a general appraisal of the evidence, it appears that the defence had miserably failed to carry out the cross-examination effectively either to impeach the credit of

the witnesses or to prove that they are not telling the truth in the trial. By the cross-examination, the testimonies of the prosecution witnesses were mere denied by way of suggestion. A general feature in the present case is that the eye witnesses were not only present in the place of occurrence, but their statements in the trial is not incoherent or incongruous to each or the other statements. For example- PW-1, Raju Das has categorically stated that having registered a sound and on hearing of the alarm he went on to the spot and found that the appellant indiscriminately dealing blows by a dao on Swapan Das. The appellant [Matilal Sen] before his eyes killed Swapan Das.

8. PW-2, Ratan Chakraborty is not very material but in the aftermath of the murder, he saw the people are running helter-skelter and when he went to the market of Lal Tilla, he noticed the dead body of Swapan Das lying in the fish market.

9. PW-3, Narayan Deb saw the bloodstain in the wearing apparels of the appellant, Matilal Sen. He had identified the dao by which the appellant had brutally assaulted the victim [Swapan Das]. No successful cross-examination has surfaced from the defence.

10. PW-4, Harimohan Sarkar is another eye witness who used to sell meat. He was in Lal Tilla Bazar on the same date. He has categorically stated that "Matilal Sen had given blows by dao on Swapan Das, one fish seller of Lal Tilla Bazar and that dao belonged

to Swapan Das." On such brutal blows by Matilal Sen, Swapan Das [since deceased] received grievous injuries and finally succumbed to those injuries. The cross-examination did not rip any part of the statement made by PW-4 during the examination.

11. PW-5, Rajesh Chandra Shil had immediately after murder appeared in the market.

12. PW-6, Gopi Ranjan Roy was eye witness of the occurrence and he has stated that Matilal Sen, a former sweeper of that market, taking one big fish cutting dao from Swapan Das indiscriminately had given blows on Swapan Das and Swapan Das fell down on the ground in the fish market. Swapan Das having received the injuries raised alarm for saving his life. Matilal Sen was detained by the shop keepers of Lal Tilla Bazar. He had left the dao in the Nath Mandap.

13. PW-7, Jaharlal Roy is a seizure witness. In his presence, the wearing apparels of the deceased was seized by the Investigating Officer and he had signed on the seizure list as one of the witnesses.

14. PW-8, Biswajit Kar is a constable who guarded the dead body in the Khowai morgue. He was also witness to the seizure of wearing apparels of the deceased [Exbt.4].

15. PW-9, Pramir Barman is not only the informant but also an eye witness of the occurrence. He has categorically stated in the

trial that 7/8 months ago from the day of his deposition at about 7/7.30 p.m., Matilal Sen had dealt severe blows by dao on Swapan Das. Succumbing to those injuries as caused by the appellant, Swapan died after few minutes. There was no effective cross-examination.

16. PW-10, Sri Haripada Saha is a hearsay witness and as such, no further elaboration is required to be made.

17. PW-11, Sri Arjun Roy is an eye witness. He has stated in the trial that while he was at Lal Tilla market for selling his commodities, he had heard hue and cry and then noticed that Matilal Sen, sweeper of that market dealing blows of dao indiscriminately to one fish seller [Swapan Das] of that market. He got scared and left the market by raising alarm. Succumbing to the injuries that Swapan Das received from the said assault, he had expired within a short while.

18. PW-12, Shri Subash Das is also a hearsay witness.

19. PW-13, Sri Bijoy Roy is another eye witness who saw Swapan Das dealing blows by a big dao used for cutting fish. There was no effective cross-examination.

20. PW-14, Sri Swapan Das was a fish seller and the appellant gave blows by dao on his person. No dent can be created in his evidence by the cross-examination.

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21. PW-15, Sri Maran Shil has stated that "I noticed that Matilal Sen formerly [acting] as a broomer [sic.] in that market is moving in the market with a blood stained dao used for cutting fish." No effective cross examination could be carried out by the defence.

22. PW-16, Shri Suresh Shil had also heard the hue and cry from Lal Tilla Bazar and noticed the former broomer of the market, Matilal Sen proceeding towards Nut Mandap with a blood stained dao in his hand and subsequently, he went away from that place. According to him, Swapan Das was murdered by blows of dao by Matilal Sen [the appellant].

23. PW-17, Sri Panchamohan Shil had a shop at Lal Tilla Bazar and he heard cry that somebody had been choped. He had rushed to the spot and found the appellant proceeding towards Nut Mandap with a blood stained dao in his hand.

24. PW-18, Sri Prabash Deb is a seizure witness. By the seizure list [Exbt.6], the Investigating Officer had seized the wearing apparels [Exbt.M.O.2] of the accused, Matilal Sen for purpose of collecting the evidentiary material by preparing the seizure list [Exbt.6].

25. PW-19, Laxmi Rani Das has stated that her husband namely Swapan Das was killed at about 7/8 months before. There was no successful cross-examination.

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26. PW-20, Sri Nandu Roy, a nephew of the deceased is a hearsay witness but he had also heard the entire episode from other people.

27. PW-21, Sri Ranabir Bhattacharya is a finger print expert. He had carried tests to match the finger prints available in the handle of dao and the specimen fingerprint collected during the investigation.

28. PW-22, Shri Chinta Deb is another eye witness who has stated in the trial that one Matilal Sen, a former sweeper of Lal Tilla Bazar, gave blows by dao on Swapan Das. Swapan Das had succumbed to those injuries. The cross-examination did not carry any probative value.

29. PW-23, Shri Asish Kumar Deb, is the Officer-in-Charge of Khowai Police Station. He has recorded the oral ejahar [Exbt.1] and on returning to the police station, he had filled up the FIR form and recorded the case being Khowai P.S. Case No.100 of 2013.

30. PW-24, Dr. Sabyasachi Nath is a forensic expert. He has stated that during examination of the sample relating to the said police case, he preferred the report [Exbt.10] reflecting the result derived after examination.

31. PW-25, Dr. Supriya Debbarma had carried out the postmortem examination over the dead body of Swapan Das in connection with Khowai P.S. G.D. Entry No.427 dated 17.07.2013.

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After identifying that report [Exbt.11], she had categorically stated that death was caused by cardio-respiratory failure owing to clean chop injury at neck which is homicidal in nature. No cross-examination was carried out.

32. PW-26, Shri Palash Dutta, a Sub-Inspector of police, was posted at Khowai P.S. and he was entrusted to carry out the investigation. In the trial, he had given a short narrative how he had conducted the investigation, prepared the site map and recorded the statements of the various witnesses on diverse dates. He had sent the seized materials for the forensic examination. The chopping dao was seized from a nearby place. He collected the reports including the postmortem examination report was submitted. No significant materials could be brought during the cross-examination.

33. We have also taken note of the inquest report where the police officer [PW-26] had observed that cause of death as disclosed to him was the indiscriminating chopping by a hacking instrument. In the postmortem report it has been recorded by Mr. Supriya Debbarma [PW-25] that the death was caused for cardio respiratory failure due to clean chop injury at neck, which is homicidal in nature and consequently the death took place within twenty four hours before the postmortem examination which had taken place at Khowai Hospital on 18.07.2013.

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34. Having re-appreciated the evidence, particularly, the testimonies of eye witnesses as stated above, we do not find any reason to interfere with the impugned judgment and the order of conviction and sentence dated 24.07.2014 as the prosecution has proved that the appellant caused murder of Swapan Das beyond reasonable doubt. Hence, the appeal fails and accordingly, the same is dismissed.

Send down the LCRs forthwith.

JUDGE **JUDGE**

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Sabyasachi B