

IN THE HIGH COURT AT CALCUTTA

Criminal Appellate Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 86 of 2020

Subrata Ghosh..... Appellant (in jail)

Versus

The State of West Bengal

For the appellant : Mr. Apalak Basu, Adv.

: Ms. Pritha Bhaumik, Adv.

For the State : Mr. Rudradipta Nandy, Id. APP.

: Mrs. Sonali Das, Adv.

Hearing concluded on : March 21, 2023

Judgment on : April 18, 2023

Md. Shabbar Rashidi, J.

1. The appeal is directed against the judgment of conviction dated December 21, 2019 and order of sentence dated December 24, 2019, passed by the

learned Special Court under Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, 1st Court, Suri, Birbhum in Spl (A) 02 of 2013.

- 2.** By the impugned judgment of conviction and order of sentence, learned Trial Court convicted the appellant for the offences punishable under Sections 324/307/302/458 of the Indian Penal Code, 1860 and sentenced him to suffer rigorous imprisonment for a term of 3 years and to pay a fine of Rs. 2000/- and in default of payment of the fine to undergo rigorous imprisonment for a further period of 6 months for the offence punishable under Section 324 of the Indian Penal Code, 1860.
- 3.** He was further sentenced to undergo rigorous imprisonment for 10 years and fine of ₹. 4000/- and in default of payment of fine to suffer rigorous imprisonment for further one year for the offence punishable under Section 307 of the Indian Penal Code, 1860.

4. The appellant was further sentenced to rigorous imprisonment for 10 years and fine of Rs. 4000/- and in default of payment of fine to suffer rigorous imprisonment for further one year for the offence punishable under Section 458 of the Indian Penal Code.
5. The appellant was also sentenced to suffer rigorous imprisonment for life and fine of Rs. 10,000/- and in default of payment of fine to suffer rigorous imprisonment for another period of two years for the offence punishable under Section 302 of the Indian Penal Code, 1860. All sentences were directed to run concurrently.
6. The appellant was, however, found not guilty and acquitted of the offences punishable under Sections 459/326 of the Indian Penal Code, 1860 and Section 3 (2) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989.
7. One Tapan Ghosh lodged a written complaint with the officer in charge Sainthia police station to the effect

that he was a permanent resident of Bolpur Mission compound. His native home was at Konarpur within Sainthia police station. He had appointed one Bhutnath Tudu to look after his ancestral properties. It was further stated in the written complaint that on October 26, 2012, in the night, Bhutnath Tudu and his wife Dulo Tudu were sleeping in his house at about 10.30 in the night. At that time, Subrata Ghosh entered into the house jumping over the boundary wall with criminal conspiracy and dragged Dulo. When Bhutnath went to rescue her, hearing her screams, Subrata assaulted him with a sharp cutting weapon (Bogi) on Bhutnath's neck. Subrata assaulted Dulo Tudu in a scattered manner after Bhutnath fell on the ground in bleeding condition. Thereafter Subrata fled away.

- 8.** The villagers took both Bhutnath and Dulo to Bolpur subdivisional hospital finding them with bleeding injuries. Dulo succumbed to her injuries. The written complaint also disclosed that Subrata Ghosh was teasing

and giving illicit proposals to Dulo Tudu during the immersion of the Idol and there was an altercation between him and Bhutnath. The de facto complainant visited Bolpur Sub-divisional Hospital and lodged the written complaint after having talks with the villagers and Bhutnath.

9. On the basis of such written complaint Sainthia PS case No. 134/12 dated October 27, 2012 under Sections 302/307 of the Indian Penal Code, 1860 and Section 3(2)(v) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, was started against the appellant.

10. The police took up the investigation and on completion of such investigation, submitted a charge sheet against the appellant on December 21, 2012. Accordingly, charges under Sections 458/459/324/326/307/302 of the Indian Penal Code, 1860 and Section 3(2)(v) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 were

framed against the appellant on March 18, 2013. The appellant pleaded not guilty to the charges and claimed to be tried. He was put on trial.

11. At the trial, in order to prove the charges, prosecution examined 34 witnesses in all. In addition, the prosecution also relied upon certain documentary as well as material evidences. On conclusion of the evidence of the prosecution, the appellant was examined under Section 313 of the Criminal Procedure Code. At such examination, the appellant was confronted with the evidences proving the circumstances appearing against him. The appellant pleaded innocence and claimed to have been falsely implicated. He, however, declined to adduce any defense witness.

12. Learned advocate for the appellant submitted at the time of advancing argument that the First Information Report which was the basis of this instant case was second in point of time. Referring to the evidence of PW6, it was contended that the police visited the scene of

occurrence in the night and noted down whatever was narrated to him. The said writing which ought to have been treated as the first information was never brought forth by the prosecution.

13. Learned advocate for the appellant has also submitted that the alleged offending weapon was seized as per the leading statement of the appellant and it was sent for chemical examination but the same was never produced at the trial. Moreover, questions have been raised regarding the integrity of recording of alleged statement leading to recovery of offending weapon. At least two of the witnesses to such recovery were not examined making the recovery itself untrustworthy. It was also contended that neither the offending weapon nor the Forensic Science Laboratory Report with regard to the alleged seized offending weapon were produced at the trial. The autopsy doctor was also not confronted with the offending weapon. Such circumstances, according to the learned advocate for the appellant, cast

a serious shadow of doubt over the veracity of the prosecution case.

14. Learned advocate for the appellant also submitted that the prosecution has also not proved any motive behind such incident.

15. Besides, learned advocate for the appellant has also referred to certain contradictions in the testimonies of the prosecution witnesses with regard to the narration of the incident claiming the same to be vital contradictions vitiating the prosecution case.

16. Learned advocate for the appellant has relied upon the ratio laid down in the case reported in **(2023) 1 SCC 83 (Rahul Vs. State of Delhi, Ministry of Home Affairs and Another)**.

17. On the other hand, learned advocate for the State has submitted that the prosecution has proved the charges beyond all reasonable doubts with the help of convincing evidence led at the trial. The prosecution witnesses have supported the case of the prosecution as

set out in the First Information Report and the same is duly testified by the medical evidence. Therefore, the charges leveled against the appellant stood proved. It is submitted that learned Trial Court rightly convicted the appellant, and the impugned judgment of conviction and order of sentence does not warrant any interference.

18. As noted above, in order to bring home the charges leveled against the appellant, the prosecution examined 34 witnesses in all.

19. The de facto complainant himself deposed as PW 1. He identified the appellant in Court. He stated in his deposition that owing to his job, he used to reside at Bolpur mission compound, though he was a resident of village Konarpur under Sainthia PS. His house and his native village used to be looked after by Bhutnath Tudu and his wife Dulo Tudu. They used to reside in the house of the complainant and looked after his cultivation.

20. He further stated that on October 26, 2012 at about 10:30 p.m., Dulo Tudu was murdered by the appellant.

He stated that on October 26, 2012, after completion of the immersion of Maa Durga Idol in the village, when Bhutnath Tudu and Dulo Tudu were returning to their house, the appellant inflicted torture upon Dulo Tudu. The appellant ill-behaved with her and tried to take her away holding her hands. Bhutnath Tudu raised objection whereupon the appellant left the place threatening them to take revenge. PW 1 also stated that when Bhutnath Tudu and Dulo Tudu were sleeping in the veranda, the appellant entered into the house by scaling the boundary wall and silently embraced Dulo Tudu. She raised alarm due to which Bhutnath Tudu woke up. At that time, the appellant assaulted Bhutnath by a sharp boogie on his neck. He fell down with bleeding injuries. Thereafter, the appellant assaulted Dulo Tudu with a sharp cutting boogie causing serious injuries on her person. Upon hearing the sound, villagers assembled and found the injured persons in bleeding condition. Seeing the villagers assemble, the appellant fled away.

21. PW 1 also stated that the incident was informed by the villagers to the local police outpost and the victims were taken to hospital by an ambulance. PW 1 also went to hospital by his side and came to know that Dulo Tudu was brought dead whereas Bhutnath Tudu was seriously injured on his neck. On his enquiry, Bhutnath Tudu narrated the incident before PW 1 regarding the assault by the appellant. He further stated that Bhutnath Tudu was treated in the hospital whereas the dead body of Dulo Tudu was sent for post-mortem examination at Bolpur sub-divisional hospital. PW 1 returned to his house with Bhutnath Tudu and his children. PW 1 accompanied by Bhutnath Tudu went to the police station on the following morning and lodged the written complaint written by Biswanath Mandal. PW 1 tendered the written complaint which was marked as Exhibit 1 and his signature on the written complaint was marked as Exhibit 1/1.

22. In his cross-examination, PW 1 stated that he was informed of the incident over telephone by his cousin brother Tarun Ghosh to the effect that Bhutnath Tudu and Dulo Tudu were injured by the appellant by a sharp cutting boogie. He also stated that when he reached hospital, Bhutnath Tudu was in a position to speak and he narrated the incident before him. From the hospital, he took Bhutnath Tudu and his children and returned to the village at about 01. 50 hours and on the following morning, he lodged the written complaint which was written in the police station itself.

23. The brother-in-law of PW 1 was examined as PW 2. He was the scribe of the written complaint. He stated that he wrote the written complaint as per the instructions of PW 1 and, thereafter, he read over and explained the contents thereof to PW1. Thereafter, the written complaint was signed by PW1 and PW 2.

24. The injured victim Bhutnath Tudu deposed as PW 3. He stated that he used to reside in the house of PW 1

at Konarpur village for 12/14 years and looked after his landed properties. The owner used to reside at Bolpur. He identified the appellant in Court. PW3 also stated that the incident took place on the day of immersion of Ma Durga Idol at about 10/10:30 PM. He has stated that in the evening on the day of incident, he along with his wife was returning home after immersion of Durga Idol. The appellant caught hold of the hands of his wife and tried to take her in the field. There was an altercation between him and the appellant over the issue and thereafter, the appellant threatened him to see afterwards and to murder him. In the night, at about 10/10:30 p.m., the appellant scaled up the boundary wall of their house with a boogie. PW 3 stated that he tried to hold the hands of the appellant but failed. The appellant assaulted him with a boogie (sharp cutting weapon) on the left side of his neck. Being injured, he raised alarm whereupon his wife came there and tried to restrain the appellant. He also went to bring a Lathi in order to restrain the

appellant. At that time, the appellant started chopping his wife with the boogie (sharp cutting weapon) due to which she sustained severe bleeding injuries specifically on the left side of her head, neck and hand. PW3 rushed to the house of Swapan Mal and Tarun Ghosh. The aforesaid persons along with others came to the house of PW3 whereupon the appellant fled away. He also stated that he became unconscious and regained his senses at Bolpur Sian hospital where he remained under treatment for three days. PW3 has stated that he was not in a position to put up his neck straight even on the date of his deposition. His wife died on the spot on the date of incident itself.

- 25.** In his cross-examination, PW3 has stated that when he met PW1 in the hospital, he was conscious. He also stated to have narrated the incident to the attending doctor after regaining his senses, though he was not in a position to state the exact time when he narrated the incident to the Doctor. In his cross-examination, PW3

categorically stated to have talked to PW1 regarding incident. He further stated that when the appellant entered into his house, he was standing in the veranda and he instantly caught hold of his hands but the appellant instantly pierced the boogie on the left side of his neck. He also stated that he did not fall down being injured, rather he went to bring a Lathi and when he returned from the room with lathi, he saw the appellant chopping his wife with the boogie. In his cross-examination, PW3 also stated that on the date of incident, he was once taken to Ahmadpur police outpost in the morning of October 27, 2012 from the hospital and thereafter, he was again admitted in the hospital. He further stated that he also recorded his statement before the learned Magistrate. He also tendered his caste certificate which was marked as Exhibit 12.

- 26.** A villager of the appellant and the victims was examined as PW 4. He identified the appellant in Court. He stated that Bhutnath Tudu used to reside in the

house of PW1. He further stated that he heard from Bhutnath Tudu that Dulo Tudu was murdered by the appellant. He further stated that on the day of immersion of Durga idol, at about 10.30/11 pm, when he was sleeping, he heard a hue and cry and went to the house of PW1 where many people were assembled talking about Bhutnath Tudu and Dulo Tudu. At that time, Bhutnath Tudu was already taken to hospital. In the following morning at about 9:30 am, PW 4 accompanied by 20/25 persons went to the house of Bhutnath and found him lying on his bed with injuries on his neck. On enquiry, Bhutnath Tudu narrated that the appellant was pulling the hand of his wife while returning home from immersion of Durga Idol for which an altercation took place. In the night, the appellant entered into the house of Bhutnath by jumping down from the mango tree and assaulted Bhutnath with a boogie and when Bhutnath Tudu went inside the room to bring the lathi, the appellant chopped Dulo Tudu by the boogie. PW 4 also

stated that on the following morning at about 11.30/12 a.m., police visited the village and collected blood stained earth under a seizure list. PW 4 proved his signature on the seizure list which was marked Exhibit 2/1.

27. Another villager deposed as PW 5. He also identified the appellant in Court. He also testified the incident as stated in the written complaint. However, PW5 is a hearsay witness. He narrated the incident as heard from the husband of the victim Dulo Tudu. He has stated that on the day of immersion of Durga idol at around 11 PM, he heard some hue and cry in his neighbourhood. He rushed there and found people rushing to the house of Bhutnath Tudu. Going there, he found Dulo Tudu lying down near khalpar with bleeding injuries which was situated just inside the door of the house of Bhutnath Tudu. He also found Bhutnath Tudu shouting for help. Bhutnath Tudu along with Dulo Tudu, their son and nephew went to hospital at Bolpur by an ambulance. PW5 was interrogated by police on the next day. In his

cross-examination, PW5 stated that Bhutnath Tudu came to his house calling him by his name and thereafter, he went to call other persons as well. He, however, could not say who among the villagers, informed the police.

28. Another villager has deposed as PW6. He also identified the appellant in Court. He has stated that Bhutnath Tudu used to reside at the house of PW1 for 10/12 years and that Dulo Tudu was murdered. PW6 has deposed in line with PW 5. He has also stated that on the day of immersion of the idol at around 11 PM in the night, he heard a hue and cry in the neighbouring place and rushed there too. Reaching at the house of Bhutnath Tudu, he found Dulo Tudu lying on the ground near khalpar with bleeding injuries which was situated just inside the door of the house of Bhutnath. He also found Bhutnath Tudu shouting for help. Many villagers came there and informed the police at Ahmadpur outpost. Thereafter, Bhutnath Tudu with his son and nephew

went to hospital by an ambulance. PW 6 also stated that on the following morning at about 11 AM, police collected blood stained earth from the house of Bhutnath under a seizure list. He proved his signature on the seizure list which was marked as Exhibit 2/2. He was also cross-examined at length.

29. A similar statement to that of PW 5 and PW 6 was made by a co-villager who deposed as PW7. He also rushed to the house of Bhutnath Tudu in the night at about 11 PM on the day of immersion of Durga idol and found Dulo Tudu lying with bleeding injuries near khalpar. He was also interrogated by the police at 11 AM on the following morning. He also testified that the police collected blood stained earth from the house of Bhutnath Tudu.

30. Another villager deposed as PW8. He has also stated that Bhutnath Tudu used to reside at the house of PW 1. He has also testified that on the date of immersion of Maa Durga idol at around 11/11:30 PM, upon hearing

the hue and cry, he went to the house of Bhutnath Tudu along with other villagers. He came to know that the appellant murdered Dulo Tudu, by chopping. He went to the village Palasdanga to bring the children of Bhutnath Tudu. On return, he saw an ambulance by which Bhutnath Tudu and Dulo Tudu were taken to hospital.

- 31.** Another villager has deposed as PW9. He has stated that the landed properties of PW 1 used to be looked after by Bhutnath Tudu who used to reside in the house of PW1 with his wife for more than 10 years. PW9 identified the appellant in Court. He also stated that on the day of immersion of Maa Durga idol at around 11/11:30 PM upon hearing hue and cry he rushed to the house of Bhutnath Tudu and came to know from him that the appellant chopped his wife Dulo Tudu. He also saw Dulo Tudu lying with bleeding injuries near Kaltala which was situated just after entering the main door. He also saw injuries on the left arm of Dulo Tudu whereas the injuries on the neck of Bhutnath Tudu were covered with

a Gamcha. He also accompanied PW 8 to Palasdanga village to bring the children of Bhutnath Tudu. He was interrogated by police on the following morning.

32. Another villager was examined as PW 10. He identified the appellant in Court. He further stated that PW 1 had landed properties at village Konarpur which were looked after by Bhutnath Tudu who used to reside in the house of PW1. He further stated that on the day of immersion of Durga idol at about 11/11:30 PM upon hearing hue and cry, he rushed to the house of Bhutnath and heard from him that the appellant murdered his wife by chopping. Thereafter, an ambulance and police came there and took away Bhutnath Tudu and his wife to the hospital. Police visited the village on the following morning.

33. Another villager from Konarpur village deposed as PW 11. This witness also stated that the landed properties of PW1 used to be looked after by Bhutnath Tudu. Bhutnath Tudu and his wife used to reside in the

house of PW1. This witness has also stated that on the day of immersion of Maa Durga idol at around 11/11:30 PM, upon hearing a hue and cry, he rushed to the house of Bhutnath and heard from him that the appellant chopped his wife Dulo Tudu. He saw Dulo Tudu lying near khalpar in bleeding condition with injuries on her left arm, he also saw Bhutnath Tudu's neck surrounded by a Gamcha. On the following morning, he was interrogated by police.

- 34.** One of the sons of the victim has deposed as PW 12. He identified the appellant in Court. He also stated that on the date of immersion of Durga idol, he along with his parents and many others were returning after seeing the immersion of the idol. At that time, all of a sudden, the appellant caught of the hands of his mother and tried to take her away at some distance with ill-motive. His father raised objection for which the appellant threatened to take revenge. He further stated that thereafter, his parents returned to the house of PW1. In the night, PW8

and PW 9 came to his house and Palasdanga village and informed that the appellant cut down the hands of his mother. Accordingly, PW 12 went to Konarpur and found that his mother was lying near Kaltala in bleeding condition. He was informed by his father that the appellant assaulted them with a sharp cutting boogie. Police came and PW 12 accompanied his parents to Bolpur Sian hospital by an ambulance. His mother was declared dead whereas father of PW 12 was treated in the hospital. He was cross-examined on behalf of the defence.

- 35.** The daughter of the victims has deposed as PW 13. She has deposed in tune with the deposition of her brother PW 12. She has stated that on the day of immersion of the Durga idol in the village, she along with her parents and many others were returning after seeing the immersion. On the way, the appellant suddenly pulled the hands of her mother and forced to take her away at a distance with an ill motive. Her father raised

objection whereupon the appellant threatened to take revenge. Thereafter, her parents returned to the house of PW 1 at Konarpur. In the night, PW8 and PW9 came to her house at Palasdanga and informed that the appellant as cut down the hands of her mother. On such report, she went to Konarpur and found her mother lying at Kaltala inside the house in a bleeding condition. Her father stated that the appellant cut them down by using a sharp cutting boogie. Police arrived there and PW 13 along with her parents and others went to hospital by ambulance, her mother was declared brought dead whereas her father was treated in the hospital. PW 13 was also cross-examined on behalf of the appellant.

- 36.** Another son of the victims was examined as PW 14. He has made similar statement as that made by PW 12 and PW 13. He has also claimed to accompany his parents when the appellant had pulled the hand of his mother and try to take her away with an ill motive. He was also cross-examined by the defense.

37. The brother of the victim Bhutnath Tudu was examined as PW 15. He stated that there was an incident on the date of immersion of Durga idol in the previous year at village Konarpur. He further stated that after the eight days of the incident of assault in the house of Bhutnath Tudu, he saw police personnel along with the appellant at the house of the appellant while PW 15 was returning after doing daily labour. He further stated that one boogie was recovered from the north-western portion of the house of the appellant as per his identification. It was made of steel and was bigger in size. The said boogie was seized under a seizure list to which PW 15 put his signature. He identified his signature on the seizure list dated November 4, 2012 which was marked as Exhibit 3/1. The appellant also signed on the seizure list. He further identified his signature on the label attached to such recovered boogie (Exhibit 4/1). He identified the appellant in Court.

38. Another witness to the seizure list dated November 4, 2012 was examined as PW 16. He has stated that one boogie made of steel was recovered from the north-western portion of the house of the appellant in his presence. It was seized under proper seizure list by the police. He stated that he put his Left Thumb Impression on the seizure list as well as the label attached to the recovered boogie. He claims being interrogated by police. He identified the appellant in court.

39. The driver of the ambulance deposed as PW 17. He testified that on the date of immersion of Durga idol at 24.00 hours in the night, he took 4/5 persons to Bolpur Sian hospital one of whom had bleeding injuries. He also stated that he was called upon by the officials of Ahmadpur police outpost.

40. An NVF personnel deposed as PW 18. He stated that on October 27, 2012, the police officers seized the wearing apparel of the deceased under a seizure list. PW

18 identified his signature on the seizure list which was marked as Exhibit 5/1.

41. Another Non Voluntary Force (NVF) official who was a witness to the seizure list dated November 24, 2012, was examined as PW 19. He proved his signature on the seizure list dated November 24, 2012 which was marked Exhibit 6/1. The defence declined to cross-examine the witness.

42. The police constable who identified the victim Bhutnath Tudu before learned Magistrate for recording is a statement under Section 164 of the Code of Criminal Procedure, 1973 deposed as PW20. He also proved his signature on the seizure list (Exhibit 7/1).

43. The cousin brother of PW1 was examined as PW 21. He identified the appellant in Court. He further stated that on October 26, 2012, Bhutnath Tudu and his wife used to reside in the house of his cousin brother. In the night at about 10:30 PM while, PW 21 was sleeping, he heard a hue and cry in the voice of Bhutnath Tudu as

shouting that the appellant had chopped his wife Dulo Tudu with a boogie. Hearing the alarm, PW 21 rushed to the house of Bhutnath and upon entering the house, he saw Dulo Tudu lying beside Kaltala in bleeding condition. He was informed by Bhutnath Tudu that the appellant entered into his house and chopped on the left side of his neck with a boogie. Thereafter, Bhutnath went into his room to bring a lathi. He saw the appellant assaulting his wife Dulo with a boogie. He further stated that so many persons assembled there. Police and ambulance also came within one hour and took the victims to Bolpur Subdivision Hospital.

- 44.** PW 22 was a witness to the inquest report. He identified his signature on the inquest report dated October 27, 2012 which was marked as Exhibit 8/1. In his cross-examination, PW 22 stated that on the date of incident he was in his house at Palasdanga and he went to Bolpur Subdivisional Hospital after hearing the news that the victim Dulo was taken to Hospital.

- 45.** An Assistant Sub- Inspector of Police deposed as PW 23. He proved his signature on the seizure list dated November 10, 2012, through which, some photographs of the place of occurrence were seized, which was marked as Exhibit 9/1.
- 46.** Another witness to the seizure list dated number 10 2012 deposed as PW 24. He has also proved his signature on such seizure list (Exhibit 9/2).
- 47.** A witness to seizure list dated November 9, 2012 deposed as PW 25. He proved his signature on the seizure list through which copies of voter identity card of Bhutnath Tudu and Dulo Tudu were seized (Exhibit 7/2).
- 48.** The Judicial Magistrate who recorded the statement of witness Bhutnath Tudu under Section 164 of the Criminal Procedure Code, 1973 was examined as PW 26. He tendered the statement of such witnesses recorded under Section 164 of the Criminal Procedure Code which was marked as Exhibit 10.

49. The police officer who conducted the investigations in respect of Bolpur PS Unnatural Death Case No.188/2012 has deposed as PW 27. He has stated that on October 27, 2012, he prepared a dead body challan in respect of the dead body of Dulo Tudu. On the said date, he also seized the wearing apparels of the deceased under a seizure list which was tendered by PW 27 and marked as Exhibit 5. The carbon copy of the dead body challan was also marked as Exhibit 10. The defence declined to cross-examine the witness.

50. The medical officer of Bolpur Subdivisional Hospital has deposed as PW 28. He stated that on October 27, 2012, he examined the dead body of Dulo Tudu and conducted post mortem examination. He tendered the post-mortem report prepared by him which was marked as Exhibit 11. PW 28 also stated the nature of injuries, he found on the person of the victim. In his opinion, the cause of death was hemorrhagic shock due to head injury caused by sharp cutting instrument which was

ante-mortem and homicidal in nature. PW 28 was cross-examined on behalf of the appellant.

- 51.** The first investigating officer deposed as PW 29. He stated that being endorsed with the investigation of the instant case, he visited the place of occurrence and prepared rough sketch map with index thereof and held raid in order to secure arrest of the appellant. He tendered the rough sketch map with index of the place of occurrence which was marked as Exhibit 13 collectively. PW 29 also collected blood stains from the place of occurrence by preparing a seizure list on October 27, 2012 (Exhibit 2). He also proved some photographs of the blood clots (Exhibit 14 collectively). He also examined the witnesses on the said date and recorded their statements under Section 161 of the Criminal Procedure Code, 1973. He, later on, handed over the investigation to the subsequent investigating officer on October 28, 2012. PW 29 was cross-examined.

52. The subsequent investigating officer deposed as PW 30. He has stated that being directed by the superiors, he took over the charge of investigation of the case on October 28, 2012. In course of investigation, he visited the place of occurrence examined available witnesses and arranged for taking photographs of the place of occurrence by professional photographers. PW 30 arrested the appellant and forwarded him to the Court with a prayer for police remand. On November 4, 2012, PW 30 recorded the statement of the appellant and on the basis of such statement of offending weapon being Katari/boogie was recovered from the house of the appellant, as shown by the appellant, in presence of witnesses. He also collected the Voter's Identity card and bed head ticket of the victim Bhutnath Tudu. He also collected and seized the photographs of the place of occurrence, arranged for recording the judicial statement of Bhutnath Tudu. He also seized the wearing apparels of the victim and collected the post-mortem report, viscera

report, inquest report and the dead body challan. PW 30 also sent the exhibits to Forensic Science Laboratory for chemical examination and collected the caste certificate of Bhutnath Tudu. On completion of the investigation, after consulting with superiors, PW 30 submitted charge sheet on December 21, 2012 under Sections 448/459/324/326/307 of the Indian Penal, 1860 Code read with section 3(2)(v) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989. The relevant portion of the statement of the appellant recorded under Section 161 of the Code of Criminal Procedure, 1973 on November 2, 2012 leading to recovery of the offending weapon was tendered by PW 30 which was marked as Exhibit 15 and Exhibit 16. The seizure list by which the recovered offending weapon was seized was tendered in evidence (Exhibit 3).

- 53.** PW 30 also proved such documents and requisitions to which he applied for issuance of bed head ticket, post-mortem report, Forensic Science Laboratory (FSL) Report.

He also proved a seizure list through which he seized caste certificate of Bhutnath Tudu (Exhibit 22 and Exhibit 23). PW 30 was extensively cross-examined on behalf of the appellant.

54. The photographer who took the photographs of the place of occurrence was examined as PW 31. He tendered the photographs prepared by him and his signatures thereon (Exhibit 25 and Exhibit 25/1), he also identified his signature on the seizure list dated November 10, 2012 by which the photographs were seized (Exhibit 9/3).

55. The Ward Master of Bolpur Subdivisional Hospital deposed as PW 32. He stated that on October 27, 2012, he sent a report to the local police station as per the instructions of the attending doctor. This witness was declared hostile by the prosecution and in his cross-examination on behalf of the prosecution; he denied the recollection of the arrival of the dead body of Dulo Tudu in the night of October 27, 2012. He, however, admitted

in such cross-examination that he informed the matter to Bolpur police station by lodging a written information and on the basis of such information the Unnatural Death Case No. 88 of 2012 dated October 27, 2012 was started.

56. The officer in charge of special operation group at Birbhum district was examined as PW 33. He has stated that on October 27, 2012, he received a written complaint from one Tapan Ghosh and started Sainthia PS case number 124/2012 dated October 27, 2012 under Sections 302/307 of the Indian Penal Code, 1860 and Section 3 (2) (v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. He proved the endorsement of receipt of the written complaint (Exhibit 1/2). He also filled up the formal FIR which was marked as Exhibit 27.

57. The medical officer of Bolpur Sub divisional Hospital deposed as PW 34. He has stated that on October 27, 2012, he examined one Bhutnath Tudu. He was admitted

with cut injury at the left side of his neck and he also had a chest pain. He was admitted on October 27, 2012 and was discharged on October 30, 2012. PW 34 proved the bed head ticket regarding treatment of Bhutnath Tudu (Exhibit 28). He also proved the discharge certificate issued by him (Exhibit 29). This witness was also cross-examined on behalf of the appellant.

58. According to the case of the prosecution, the appellant entered into the house of PW1 at about 10.00/11.00 PM, which was then habited by the victims Bhutnath Tudu and his wife Dulo Tudu. He assaulted PW3 by boogie causing bleeding injuries on the left side of his neck. When PW3 went inside the room to bring a lathi, in order to thwart the appellant, the appellant assaulted his wife Dulo Tudu with the said boogie causing serious bleeding injuries. PW3, in his deposition, claimed to have seen the appellant chopping his wife with the boogie, while he was returning from inside the room with the lathi.

59. The matter was instantly brought to the notice of the house owner, PW1, who asked them to inform the police. Two of the villagers went to bring the children of the victims from their house in the adjoining village. On their arrival, both the victims were taken to hospital by the villagers. The victim Bhutnath Tudu (PW3) was treated for his injuries whereas, his wife, Dulo Tudu was declared by the doctor as brought dead.

60. The doctor who examined the dead body of victim Dulo Tudu, PW28, upon examination found cut injury 11 inches X 4.5 inches behind the left ear extending up to occipital region posteriorly, occipital bone cut exposing brain matter, brain matter exposed and lacerated over occipital region, both lungs congested, heart empty, liver and spleen congested and bladder empty. He also found that the head injury posteriorly caused by sharp cutting instrument leading to laceration of brain matter and extensive haemorrhage. According to PW28, the cause of death, in his opinion, was that haemorrhagic shock due

to head injury caused by sharp cutting instrument which was ante-mortem and homicidal in nature. Therefore, from the facts and circumstances of the case as set out by the prosecution together with the testimony of PW28 as well as that of the Post Mortem Report, Exhibit 11 it is quite evident that the prosecution has been able to establish that the victim Dulo Tudu died an unnatural death and that she was murdered.

61. As noted above, PW3 is an eye witness to the incident. He has unequivocally stated that the appellant is the person who dealt the fatal blow.

62. He stated that in the afternoon on the day of immersion of Maa Durga idol in his village, he had an altercation with the appellant concerning his victim wife. The appellant had at that time threatened to see him afterwards. Thereafter, at about 10/10.30 pm, the appellant scaled up the boundary wall of the house of PW3 with boogie (khanra) in his hand. It also transpires from the evidence of PW3 that as soon as the appellant

entered into his house, he captured him but failed to arrest his hand due to which the appellant assaulted him with the boogie on the left side of his neck. He shouted being injured whereupon his wife came there and tried to restrain the appellant. PW3 also went inside to bring a lathi from the room. At that time, the appellant started chopping his wife with boogie due to which she sustained severe injuries specifically on the left side of her head, neck and hand. Such a case made out by the prosecution squarely implicates the appellant in assaulting PW3 and his wife and resulting in her death. In his cross-examination also, PW3 has stated that he and his wife were not sleeping when the appellant entered into the house.

- 63.** In his narration of the manner of incident, PW3 has clearly stated that when the appellant assaulted him and his wife causing serious injuries to them, PW3 incidentally sought help from PW5 and PW21. The aforesaid witnesses, in their deposition, have supported

the case of the prosecution corroborating the statement made by the sole eyewitness PW3. PW4, PW5, PW6, PW7, PW8, PW9 and PW10 are the residents of the locality. They have corroborated the statement made by PW3 as well as in the first information report. All the aforesaid witnesses have stated in a single tone that they heard hue and cry from the house of the victim at around 10/10.30 pm, they rushed to the house of PW3 and the victim to know from his mouth that he along with his wife were assaulted by the appellant. All of them have claimed to have seen the wife of PW3 lying motionless at Koltala situated just inside the entrance to the house of the victim. All the aforesaid witnesses have stated that the date of the incident was the night following the date of immersion of Maa Durga idol at around 10/10.30 pm. All the aforesaid witnesses have stated about a hue and cry and gathering of so many village people upon such hue and cry at the house of PW3, the defence has extensively cross-examined the aforesaid witnesses with

reference to the statement made in their deposition. To our estimation, the defence has not been able to shake the credibility of the aforesaid witnesses so far as the incident involved in this case is concerned.

64. It has come out from the evidence on record that the victim couple used to reside in the house of PW1 at village Konarpur and used to look after the landed property of PW1 whereas their children used to reside at the original house of PW3 and his victim wife at the village Polashdanga which is an adjoining village. The evidence on record goes to show that after the incident when people assembled and, PW3 and his wife were found in injured condition and were required to be medically examined, two of the villagers went to the residence of PW3 at Polashdanga to bring his children.

65. The two sons and daughter of the victims PW3 and Dulo Tudu have deposed as PW12, PW13 and PW14 respectively. The aforesaid witnesses have monotonously stated in their deposition that their parents and the

appellant had an altercation when they were returning from the immersion of Maa Durga idol. They have stated that the appellant tried to pull hands of their mother with an ill-motive which was objected by their father, PW3. Following this, there was an altercation between PW3 and the appellant, and the appellant threatened PW3.

- 66.** Not only that PW12, PW13 and PW14 have also stated in a single tone that after the altercation, their parents PW3 and the victim went to the house of PW1 whereas the three brothers and sisters returned to their house at Polashdanga . They have also stated that in the night after the incident, PW8 and PW9 came to their house at Polashdanga and had given information that the appellant had cut down the hands of their mother. They accompanied PW8 and PW9 to Kunarpur village at that point of time and found their mother lying at Koltala. PW12, PW13 and PW14 have also stated that their father (PW3) was crying out that the appellant had assaulted

his wife Dulo Tudu and PW3 himself by a sharp cutting boogie.

67. The aforesaid witnesses along with the others accompanied their victim parents to the hospital where Dulo Tudu was declared brought dead. The other victim PW3 was medically treated in the hospital.

68. From the evidence of PW12, PW13 and PW14, the case of the prosecution so far as the altercation between the appellant and PW3 over the issue of dragging the wife of PW3 with an illicit motive is also corroborated. All the aforesaid witnesses have stated that they were the eye witnesses to the incident when the appellant pulled the hands of their mother Dulo Tudu and they have testified that the appellant tried to drag her to the field with some ill-motive and following this, there was an altercation between the appellant and their father PW3. They have also testified that the appellant, in course of such altercation, had threatened PW3 and Dulo Tudu to see them afterwards and to take revenge.

69. The aforesaid witnesses were cross-examined on behalf of the appellant in respect of the factum of alleged altercation between PW3 and the appellant and the endeavour by the appellant to drag Dulo Tudu with an illicit motive. However, to our estimation, such cross-examination has not been able to imprint any dent upon the testimony of PW12, PW13 and PW14.

70. The occurrence is said to have taken place at around 10/10.30 pm in the night of October 26, 2012. The victim PW3 and his wife were assaulted by the appellant in course of which the wife of PW3 died and PW3 himself sustained injuries.

71. As noted above, the villagers assembled at the house of PW3 after the incident upon his alarm. Thereafter, two of the villagers went to the adjoining village to bring the children of the PW3 and the deceased victim, and on arrival of their children, the victims were taken to hospital. From the evidence of PW 4 together with the testimony of Exhibit 28, it transpires that the

victim Bhutnath Tudu was taken to hospital and was attended by the doctor on October 27, 2012 at 12.15 hrs. The incident was reported to the police on December 27, 2012 at 10.55 hrs. Exhibit 19 goes to show that the victim Bhutnath Tudu was attended at the emergency of Bolepur sub-divisional hospital on October 27, 2012 at 00.15 am i.e. within a very short period of the incident. The chronology of the evidence so disclosed, the aforesaid documentary as well as oral evidence, seems to be quite consistent with the narration of the incident disclosed from the materials on record. The witnesses appear to corroborate each other with regard to each and every detail of the incident.

72. The incident is said happen at around 10.30 pm. The victim raised alarm and in pursuance thereof, villagers assembled instantly. The witnesses have testified that they assembled at the house of PW1, then inhabited by the two victims, shortly after the incident and they were taken to the hospital. The sequence of

happenings coming out from the evidence on record rules out the possibility of any third party intervention suggesting involvement of any person in the incident of assault upon PW3 and his wife, other than the appellant. The evidence of PW3 is explicit as to the direct involvement of the appellant in the incident of assault upon the two victims.

73. All the circumstances were confronted to the appellant at the time of his examination under Section 313 of the Criminal Procedure Code. Besides pleading an evasive denial and innocence, no plausible explanation was offered by the appellant with reference to the death of the wife of PW3 and injury sustained by PW3.

74. The appellant is charged with assaulting the two victims with a sharp cutting weapon viz. boogie. The injuries found on the person of both the victims i.e. PW3 and his wife were opined by the autopsy surgeon as well as the attending doctor to be inflicted by sharp cutting object. A sharp cutting boogie was recovered from the

house of the appellant. Although, evidence has been led at the trial that the alleged recovery was made at the instance of the appellant. Witnesses have testified recovery of such weapon from the house of the appellant as shown by him. A portion of the statement of appellant recorded under Section 161 of the Criminal Procedure Code, 1973 has been proved which purportedly led to the recovery of the alleged offending weapon. However, the said weapon was neither produced at the trial nor it was sent for chemical examination. The alleged weapon was also not shown to the doctors for an opinion in reference to the injuries found on the person of the two victims. As such we are of the opinion that the purported recovery of the alleged offending weapon falls short of its connection with the incident involved in the case.

75. Nevertheless, involvement of the appellant in the incident of assault upon PW3 and his wife appears to have been emphatically proved, otherwise, independent of the recovery of alleged offending weapon at the

instance of the appellant upon his leading statement in terms of the provisions of Section 27 of the Indian Evidence Act, 1872.

76. In the case of **Rahul (Supra)**, it was observed by the Hon'ble Supreme Court, that,

“40. As per the settled legal position, in order to sustain conviction, the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused only and none else. The circumstantial evidence must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

77. In the instant case, the evidence on record as well as the examination of the appellant under Section 313 of the Criminal Procedure Code, taken together as also taking into account the other circumstances gives rise to one and only proposition pointing to the guilt of the appellant. Nothing appears to have been brought forth suggesting any inference as to the involvement of any person other than the appellant. The prosecution appears to have been able to prove the chain of circumstances so neatly woven that leaves no space for any inference other than the conclusion that within all human probability, the crime must have been committed by none other than the appellant and the appellant alone.

78. Therefore, in the light of discussions made hereinabove, we find no reason to interfere with the impugned judgment of conviction dated December 21, 2019 and order of sentence dated December 24, 2019, passed by learned Special Court under the Scheduled

Castes & Scheduled Tribes (Prevention of Atrocities) Act,
1989, 1st Court, Suri, Birbhum in Spl (A) 02 of 2013.

The same is hereby affirmed.

79. Accordingly, the instant appeal being **CRA 86 of 2020** is hereby stands dismissed.

80. Period of detention already undergone by the appellant during enquiry and /or trial shall be set off against the substantive sentences in terms of the provisions of Section 428 of the Code of Criminal Procedure, 1973.

81. Trial Court records along with a copy of this judgment and order be sent down at once to the learned Trial Court for following up the necessary action.

82. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

83. I agree.

[DEBANGSU BASAK, J.]

