

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

C.R.A. 426 of 2019

***Sibu Mallick @ Shibu Mallick & Anr.*
versus
*The State of West Bengal & Anr.***

For the Appellants : Mr. Abhra Mukherjee,
Mr. Sauradeep Dutta.

For the State : Mr. Madhusudan Sur,
Mr. Dipankar Paramanick.

Reserved On : 30.08.2024

Judgement On : **10.09.2024.**

Tirthankar Ghosh, J. :

The present appeal has been preferred against the judgment and order of conviction and sentence dated 10.07.2019 passed by the learned Additional Sessions Judge, F.T.C.-3, Barrackpore, North 24 Parganas in Sessions Trial No. 08(04)/2010 arising out of Sessions Case No. 518/2009, wherein the learned trial Court was pleased to convict the appellants under Sections 304 II/448/34 & 324/34 of the Indian Penal Code and sentenced them as follows:

- (i) For the offence punishable under Section 304 Part II of IPC –
Imprisonment for 5 (five) years and fine of Rs.2,000/- each i.d. to
suffer Simple Imprisonment for 1 (one) month each;

- (ii) For the offence punishable under Section 448 of IPC – Simple Imprisonment for 1 (one) year and fine of Rs.1,000/- each, i.d. to suffer further S.I. for 1 (one) month each;
- (iii) For the offence punishable under Section 324 of IPC – Simple Imprisonment for 1 (one) year and fine of Rs.1,000/- each, i.d. to suffer further S.I. for 1 (one) month each.

Naihati Police Station Case no. 235/09 dated 05.08.2009 was registered for investigation under Sections 448/325/326/304/34 of the Indian Penal Code on the basis of a complaint submitted by Jyotsna Dey with the Officer-in-charge of Naihati Police Station. The allegations made in the written complaint were to the effect that on 05.08.2009 at around 5.00 am the complainant suddenly heard someone screaming from the adjacent room by saying “Save me, save me, he has been killed”. On hearing the same the complainant and his son rushed and found that his son-in-law was lying in a pool of blood on the bed and her daughter was standing being soaked with blood all over her body. Her daughter Saraswati Mallick and her husband Sushanta @ Chhotka Mallick were sleeping in the said room when the brother of said Sushanta @ Chhotka Malik being Sibul Mallick and Rabi Mallick attacked her daughter and son-in-law with wooden baton and iron axe. As they raised hue and cry the accused Sibul Mallick and Rabi Mallick escaped from the spot. Immediately her daughter and son-in-law Sushanta were shifted to Naihati Hospital, where they were admitted and at the afternoon hours on 05.08.2009 her son-in-law succumbed to the injuries and her daughter

Saraswati was in critical condition. The complainant prayed for proper investigation against the miscreants Sibu Mallick and Rabi Mallick.

On receipt of the aforesaid complaint FIR was registered and the case was entrusted to Sasthi Charan Khamaru, Sub-Inspector of Naihati Police Station to investigate the case. The investigating officer on completion of investigation submitted charge-sheet before the learned ACJM, Barrackpore under Section 448/325/302/34 of the Indian Penal Code. Learned ACJM, Barrackpore was pleased to take cognizance of the offence and after compliance of the relevant provisions of law was pleased to commit the case to the Court of Sessions. The proceedings were transmitted to the learned Additional Sessions Judge, F.T.C. 3rd Court, Barrackpore being the learned trial Court who on consideration of the materials was pleased to frame charges under Section 448/325/302/34 of the Indian Penal Code. The contents of the charges were read over to the accused persons who pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case relied upon 13 witnesses which included PW1, Jyotsna Dey, complainant and mother-in-law of the deceased; PW2, Saraswati Mallick, injured and wife of deceased Sushanta @ Chhotka Mallick; PW3, Tarak Dey, brother of PW2 and son of the complainant; PW4, Sabita Dey, wife of PW3; PW5, Dr. Nilima Das, Medical Officer of Naihati State General Hospital who treated the deceased Chhotka Mallick; PW6, Mira Biswas, resident of the locality; PW7, Thakurdas Pal,

neighbour; PW8, Bandana Mandal, neighbour; PW9, Jaganmoy Chakraborty, ASI of police who filled up the formal FIR and also held inquest; PW10, Dr. Abhijit Ghosal, Post-Mortem doctor; PW11, Chaitnya Ghosh, Constable who took the dead body of Chhotka Mallick from Naihati Police Station to Barrackpore police morgue; PW12, Biplab Biswas, seizure list witness; PW13 Sasthi Charan Khamaru, Investigating Officer of the case.

PW1, Jyotsna Dey, is the complainant and mother of Saraswati Mallick. She alleged that Chhotka Mallick @ Sushanta Mallick was her son-in-law who came to their house on 5th August last year along with her daughter and they went to bed after taking meal at night. At about 5.00 am in the morning she heard her daughter shouting 'bachao bachao', when she along with her son rushed to the said room and found Sushanta was lying on the bed unconscious and in a pool of blood. Her daughter Saraswati also sustained injury and she was standing being drenched with blood. Sibul Mallick and Rabi Mallick assaulted the couple and she saw Sibul Mallick with a baton in his hand and Rabi had sickle, when both of them reached the room, the accused persons fled away. She identified both the accused persons in Court and proceeded to state that the couple were taken to Naihati hospital and both were medically treated there, at about 1.55 pm Sushanta died at Naihati State General Hospital and her daughter was released from the hospital after a week. Over the incident she lodged the written complaint which was drafted as per her instructions by a person of their locality, which was read over and explained to her and she put her LTI. She further stated that Sibul is elder

brother of deceased Sushanta and Rabi is also brother of Sushanta and their house was 10 minutes walking distance from her house. In cross-examination she stated that she is unable to state what is written in the FIR because she is illiterate, however, the incident took place at her residence as her daughter and son-in-law came to visit her house. In a specific quarry during cross-examination she replied that the door of the room was bolted from inside when the couple were asleep and the door was broken. However, police did not seize the broken door. She further answered that she along with her son and the local boys took her daughter and son-in-law to Naihati Hospital by van rickshaw. She further replied during cross-examination that when she and her son reached the spot she found both the accused persons and the local people also came there. Further she stated that she is unable to narrate any name of any person of the locality who had seen the accused persons fleeing away. She also stated that she narrated the fact to the doctor at Naihati State General Hospital and police in course of investigation seized the offending wooden baton from their house in her presence and prepared a document where she put her LTI. In respect of a specific question in cross-examination she replied that the deceased was arrested time and again for consuming liquor, however, she denied that the deceased used to assault her daughter under the influence of liquor. She also replied that the accused persons took away the offending sickle but left the wooden baton. The witness was recalled by the prosecution where she identified the complaint which was lodged with the Inspector-in-

charge, Naihati Police Station and also the inquest report. She identified her LTI on both the documents.

PW2, Saraswati Mallick, is the wife of the deceased namely, Chhotka @ Sushanta Mallick. She deposed that the incident took place on her father's house on 05.08.2009 at about 5.00 am when she along with her husband and female child went to bed at night after taking meal. At dawn when the door of the room was being broken, she then took her child and stood up. Thereafter Sibu Mallick entered the room and started hitting her husband with wooden baton indiscriminately. She tried to escape with her child, when Sibu jumped on her and hit her head with the wooden baton. Rabi Mallick hit her husband repeatedly with sickle. She raised alarm, later her mother and elder brother rushed to the spot. Both she and her husband were drenched in blood and were taken to Naihati Hospital and on her way she lost her senses. On the following morning she regained her sense and her mother disclosed that her husband died at 1.55 pm. She was admitted at the same hospital for 7/8 days. She identified both the accused persons in Court. She further stated that she was interrogated by the police at the hospital where she narrated the incident to police on the following day of the incident. On being confronted by the prosecution she stated that her father's house consisted of two rooms and on the fateful night she along with her husband were in a room and her mother, elder brother and his wife was in another room. She also stated that her matrimonial house is 15 minutes away from her father's house and accused persons reside at her matrimonial house. In cross-examination she denied that

Sibu Mallick did not assault her with the wooden baton or that she became senseless and instantly regained it. She explained she was in sense when she was taken to hospital. She stated to the doctor the name of the assailants. She denied that there was only one room at her paternal house and to reach her father's house from her matrimonial home they had to walk through locality. On being questioned on behalf of the accused in cross-examination she stated that Rabi started assaulting her by catching hold of the tuft of her hair. When she went to hospital the local people accompanied them and she was admitted at the female ward while her husband was admitted at the male ward. She further replied that when her husband died she had no sense and she came to know after two days of her husband having passed away.

PW3, Tarak Dey is the brother of PW2 and son of the complainant PW1. He deposed that he knew the accused persons and identified them in Court. He narrated the incident by stating that on 04.08.2009 at night when he was at his house his sister and her husband were sleeping with their kids on the verandah of the house. Due to family dispute at her matrimonial home both of them came to their house on 03.08.2009. On 05.08.2009 at around 5.00 am he heard hue and cry of his mother on the verandah which is adjacent to his room where he was sleeping. He came out from the room and found his sister lying with bleeding injuries on her head at the courtyard and found that Chhotka being severely injured and was bleeding on his face and head lying on the cot at the verandah. He informed the police over phone and police authorities thereafter took his sister and Chhotka to Naihati Hospital where

they got admitted. Thereafter he returned home and on 05.08.2009 at around 12.45 pm he proceeded to the hospital after getting information that Chhotka expired. The witness stated that hearing hue and cry of his mother he came out from his room and found Sibbu Mallick with leg of a wooden cot and Rabi Mallick with a weapon like sickle, at their verandah. They left the place when he reached there. In cross-examination he replied that he came out of the room within a minute on hearing hue and cry of his mother and took his sister and her husband to the hospital by rickshaw van. Additionally he stated that his wearing apparels became stained with blood of his sister, however, police did not seize the blood stained wearing apparels. The witnesses replied that police seized blood stained wearing apparels of his sister and her husband but not in his presence. To a specific question on behalf of the accused the witness replied that Chhotka was not in a position to talk. He did not narrate the incident to the attending doctor and stayed at the hospital about two hours. Police interrogated him at his house for about five minutes at that time 8-10 local persons were present which included Mira Biswas, Bandana Mondal, Thakurdas Pal and others. He specifically replied that Chhotka died at Naihati Hospital. Police brought the dead body of Chhotka to police station in his presence. The witness was recalled and he identified his signature in the seizure list by which the wooden baton was seized, however, on seeing the wooden baton he answered that this is the said leg of the wooden cot but he was not sure regarding whether the same material was seized by the police

authorities. In cross-examination he replied that the wooden baton did not bear his signature as he only signed on the seizure list.

PW4, is Sabita Dey who deposed that PW1 Jyotsna Dey is her mother-in-law and Chhotka Mallick is the husband of her sister-in-law who expired. She narrated the incident to the Court that on 03.08.2009 Chhotka and his wife (sister-in-law) came to their house and stayed there due to family dispute of Chhotka Mallick. On 04.08.2009 at night Chhotka and his wife were sleeping at the verandah of their house when she along with her husband and mother-in-law were sleeping in the room. On 05.08.2009 in between 5.00 and 5.30 am she heard hue and cry of her sister-in-law 'bachao bachao', when she along with her husband and mother-in-law came out from the room and found that Chhotka was lying on the cot at verandah with bleeding injury. Chhotka was assaulted by Sibu Mallick by wooden baton and his brother Rabi Mallick was also there with a sickle. Her sister-in-law was standing being soaked in blood all over her body and head injury. Hearing hue and cry local people assembled there while her husband informed police over phone. After police reached there her husband took Chhotka and his wife to hospital by a van rickshaw. However, she did not visit the hospital as she had a child. In cross-examination she replied that she gave her statement to the police authorities on the day of the incident after the injured were shifted to hospital. As per instruction of police her husband took the injured to Naihati Hospital, police stayed for about one hour and recorded their statement, inspected the blood stained spot, noted down information. Police seized wearing apparels (lungi

and shirt) of Chhotka Mallick and Chhotka was taken to hospital being covered with a cloth. Further on being cross-examined she replied that Chhotka was not in his sense and as such not in a position to talk. He died at about 1.50 pm on the same day at hospital. After post-mortem examination was completed at the hospital dead body of Chhotka was taken to their house. There are 10/12 houses surrounding their house. Local people assembled at their house, she named some of the local people being Bandana Mondal, Mira Biswas, Thakurdas Pal and others whom she named as neighbour. On being further questioned she replied that after her marriage Chhotka was not arrested by police. Her marriage was held in the year 2003 and according to her Chhotka was not addicted with liquor. On a specific question on behalf of the accused she denied that Chhotka while stealing electric wire got electric shock and fell down after receiving injury. The witness was recalled by the prosecution and on being questioned she stated that she knew the accused Rabi Mallick and Sibu Mallick and identified them in Court. She also stated that police took her signature on a paper while seizing the leg of the wooden cot with which Chhotka Mallick was beaten. She identified her signature in the seizure list which was admitted in evidence. Police also according to her seized the leg of the wooden cot, she identified the same which was admitted in evidence. In cross-examination she replied that she did not put any signature or any specific identification mark on the leg of the wooden cot and she is not sure whether this is the same material which has been seized by the police.

PW5 is Dr. Nilima Das, Medical Officer who on 05.08.2009 examined Chhotka Mallick. She deposed that the deceased suffered the following injuries *"lacerated injury above right eye brow, 1 1/2" x 1/2", lacerated injury- above on left eye brow - 2 1/2" x 1 1/2" and another measuring 1" x 1/2".*" On 05/08/2009 at 7.20 am she examined the patient at the hospital, prepared and signed the injury report which was admitted in the evidence. She further deposed that she examined Chhotka Mallick on emergency ward and after examination he was referred to R.G. Kar Hospital or J.N.M Hospital, Kalyani, as the injury of the patient were head injuries and the same was grievous. She further deposed that she also examined Saraswati Mallick wife of Chhotka Mallick on the same day and on examination she found that *head injury (occipital parieto region) measuring 2 1/2" x 1/2"*, she also found heamatoma on the same place measuring 3" x 2 1/2". The patient according to her was admitted and referred to R.G. Kar/J.N.M Hospital. Nature of injury of this patient was grievous. She prepared and signed the report which was admitted in evidence.

In cross-examination she replied that Chhotka stated to her that he was assaulted by lathi and he did not state her about any baton. She also replied that both the injured did not state to her that whether they were assaulted inside the room or at the verandah. But they stated while they were sleeping they were assaulted. To a specific question she responded that to ascertain whether internal haemorrhage was caused or not, she advised for C.T. Scan and it is upon the surgeon to decide the nature of injury after report of C.T.

Scan. But according to her, the nature of injury was grievous. She also replied that the type of injury may be caused by a lathi and the patient stated to her that the name of the assailants were Sibu Mallick and Rabi Mallick, who are brothers of Chhotka Mallick but they did not state to her anything more about the appellants.

PW6, Mira Biswas is residing in the same locality and she deposed that she knew Saraswati who was married with Chhotka a resident of Anndabazar, which is about 15 minutes walking distance from their locality. Additionally she stated that Chhotka is dead and she heard that his brothers murdered Chhotka. About three years ago she heard hue and cry at round 5.30 am from the house of Saraswati when she reached there after 15 minutes, local people were also present and she found that Chhotka was taken on a van and he was bleeding. There were blood on his face and he was unconscious. She was informed by Saraswati (PW2) that brother of Chhotka assaulted him, however, she did not know the brother of Chhotka. In cross-examination she stated that her house is intervened by 3/4 houses from the house of Saraswati and not close to each other. However, she categorically denied the fact that Saraswati did not tell her that brothers of Chhotka assaulted Chhotka.

PW7 is Thakurdas Pal, a neighbour of the complainant who deposed that he knew the complainant and her daughter and after marriage Saraswati started residing at Anandabazar with her husband. He did not know the name of the husband of Saraswati but had seen him. Husband of Saraswati was not

alive and he heard from the brother and mother of Saraswati that husband of Saraswati was murdered. About three years ago at about 6.30 am he heard hue and cry from the house of Saraswati. Police came at their house and called him. In cross-examination he stated that except asking his name police did not enquire anything regarding the incident.

PW8 is Bandana Mondal, a neighbour who deposed that she knew Jyotsna Dey and her daughter Saraswati. After marriage of Saraswati with Chhotka Mallick, the couple resided at Anandabazar at her in-law's house which was situated about 15 minutes walking distance from their house. Additionally she deposed that Chhotka Mallick husband of Saraswati was murdered in the parental house of Saraswati about three to four years ago. One morning at about 5.30 am she heard hue and cry from the parent's house of Saraswati and many persons assembled there. Elder brother of Saraswati and his wife were standing on the road and she heard from them that the brothers of Chhotka murdered him. She did not enter the parent's house of Saraswati and also did not see Chhotka. She also did not know elder brother of Chhotka. In cross-examination she stated that she said to the police authorities that she did not see the incident.

PW9, Jaganmoy Chakraborty is ASI of Police who at the relevant point of time was posted at Naihati Police Station and on that day he received a written complaint of Jyotsna Dey and started Naihati Police Station case no. 235 dated 05.08.2009 under Sections 448/325/326/302/34 of IPC and endorsed the

complaint. He identified his endorsement as also the formal FIR which were admitted in evidence. He thereafter deposed that Case Record was placed before the Inspector-in-charge to endorse the case to Sub-Inspector Sasthi Charan Khamaru for investigation. As per instruction of the then Inspector-in-charge he started Naihati P.S. U/D Case no. 49 dated 06.08.2009 and held inquest over dead body of the deceased Chhotka in connection with Naihati PS case no. 235 of 2009. He identified the inquest report which was marked in evidence. In cross-examination he stated the he had no personal knowledge regarding the case excepting inquest. The witness was recalled and he identified his signature in the seizure list by which the wearing apparels of the deceased, viscera of the deceased and P.M. blood of the deceased was preserved and the same were seized. His signature was admitted in evidence.

PW10, Dr. Abhijit Ghosal conducted post-mortem over the dead body of Chhotka Mallick in connection with Naihati Police Station UD case no. 49/2009 dated 05.08.2009. On examination he found the following injuries:

“On examination I found (1) a lacerated wound 1½" x ½" on the right parital area of the scalp into bone, 2½" to the right of the middle (2) alacerated wound 1½" x ½" into scalp on the right side of forehead, 2½" to the right of midline (3) a lacerated wound 1½" x ½" above the right eye brow (4) a lacerated wound 1½" x ½", ½" above left eye brow (5) a lacerated wound 2½" x 1" x bone on the left side of forehead 1" to the left of midline ½" above the left eye brow (6) presence of swelling with haemotoma over both eye lids (7) abrassion - 2" x 1" on the bridge of the noes (8) a lacerated

wound 1" x 1/2" on the left cheek 1" to the left of the midline (10) a diffuse swelling with haematoma - 4" x 1/2" over the right cheek (11) abrasion on the chin - 1" x 1/2"

On dissection fracture of all nasal bones (2) fracture of right half of maxilla (3) fracture of right half of the base of mandible (4) scalp haematoma - 2" x 1/2" on the right side of parietal and frontal area of the scalp (5) a depressed comminuted fracture 2 1/2" x 1" over the frontal and parietal bone (6) diffuse subdural extra vascularisation of blood involving all the lobes of brain (7) fracture of the anterior and middle cranial fossa at the base of the scalp."

The witness stated that in his opinion the death was due to effects of injuries which were ante-mortem in nature. He further answered that if a person is hurt by leg of wooden cot with heavy force, the injuries he mentioned in the report may be caused. In cross-examination he deposed that he noted the position of heart, lung, liver and stomach in her report. The organs were intact and viscera of the deceased was preserved with nail cutting, hair and blood sample for FSL Examination. But he did not receive the report of the FSL. On a specific question in cross-examination he answered that if a person fell down during scuffling the injury to some extent may be inflicted but not all the injuries as he has mentioned in the post-mortem report. He further emphatically stated that injuries which were inflicted were sufficient to cause death of a person.

PW11, Chaitnya Ghosh, constable of police attached to Naihati Police Station who on 06.08.2009 took the dead body of Chhotka from Naihati Police

Station to Barrackpore Police morgue. He identified the copy of the dead body challan which was marked in evidence. In cross-examination he categorically stated that he was not aware regarding the cause of death of Chhotka.

PW12, Biplab Biswas who deposed that he was residing at the locality of the complainant and about 5/6 years ago in the morning police of Naihati Police Station came to the spot where Chhotka was murdered. Police collected one leg of wooden cot from the said spot in his presence when other people of the locality were also present. He signed on the paper and identified his signature in the seizure list which was admitted in evidence. He also identified the leg of the wooden cot which was marked as MAT exhibit. In cross-examination he replied that he did not sign or there was any special mark of identification on the leg of wooden cot and being asked by police authorities he signed on the said paper.

PW13 is Sasthi Charan Khamaru, the investigating officer of Naihati police station case no. 235/2009 dated 05.08.2009 who deposed that after taking charge of the investigation he visited the place of occurrence, prepared rough sketch map with index, he examined available witnesses by recording their statements, seized leg of the wooden cot (baton) under a proper seizure list, seized injury report of Saraswati Mallick from Naihati S.G. Hospital. Arrested Sibul Mallick and Rabi Mallick on 09.08.2009 and forwarded them before Court. On 05.09.2009 he seized the printed lungi, viscera and p.m blood of the deceased under proper seizure list produced by ASI Jaganmoy

Chakraborty who held inquest. He collected the post-mortem report, examined the witness Jaganmoy Chakraborty and Chaityanna Ghosh and after completion of investigation submitted charge-sheet on 05.11.2009 under Section 448/325/302/34 of the Indian Penal Code against Sibu Mallick and Rabi Mallick.

Mr. Abhra Mukherjee, learned advocate appearing for the appellants submitted that there are discrepancies in the version of the witnesses as also suppression of material facts which renders the prosecution case so improbable that it would be impossible for any person of ordinary prudence to rely upon such evidence and arrive at a conclusion of guilt in respect of the appellants. To that effect learned advocate submitted that the witnesses as also the investigating officer in the sketch map was unable to portray the place of occurrence while some of the witnesses deposed that the place of occurrence happens to be verandah, others stated regarding a room. Further the medical evidence do not corroborate the oral deposition of the witnesses including the sole eye-witnesses who deposed that the deceased was assaulted with a sickle, however, the medical reports reflected that there are lacerated injury and there are no incised wounds. Additionally it has been emphasised that although, the locality is a congested area but there is no evidence in support of the fact that any person has seen these appellants to enter the house of the complainant where the deceased was sleeping. Further there was no recovery of the sickle or the axe which have been complained of being used as a deadly weapon along with a wooden baton. Emphasising on the aforesaid factual

circumstances and the discrepancies available in evidence learned advocate for the appellants submitted that the prosecution has failed to make out any case proving the circumstances beyond reasonable doubt for convicting the appellants and as such the judgment and order of conviction and sentence passed by the learned trial Court should be set aside.

On the contrary Mr. Madhusudan Sur, learned advocate appearing on behalf of the State submitted that the prosecution witnesses were consistent in their version so far as the complicity of the present appellant are concerned who broke open the door and assaulted not only the deceased but also his wife with wooden baton and sickle. The post-occurrence witnesses have found the deceased lying in a pool of blood on the bed while the injured witness, PW2 (Saraswati Mallick) being drenched in blood, as a result of the injuries inflicted upon her. According to the State prosecution has also brought materials on record that both the deceased and the injured were taken by a rickshaw van to the hospital and there are statements which were made by the **deceased as well as the injured** regarding the accused/appellants assaulting them with wooden baton and sickle. The State contends that the materials which have been placed on record are consistent and the oral evidence is supported by medical evidence which leaves no room for the accused/appellants to escape from the charges framed against them. Thus, it was prayed on behalf of the State to affirm the judgment and order of conviction and sentences so passed by the learned trial Court.

Having taken into account the submissions advanced by the learned advocate appearing for the appellants as well as that of the State, I am of the view that the witness Saraswati Mallick is not only an eye-witness but she is also an injured witness, so her statement before the Court assumes significance. As it is settled proposition of law as decided by the Hon'ble Supreme Court in the case of *Abdul Sayeed –versus– State of Madhya Pradesh reported in (2010) 10 SCC 259*, paragraph 30 of the said judgment which is relevant for the purposes of the present case is quoted below:

“30. *The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein”.*

In the evidence of PW2, Saraswati Mallick the manner in which the incident took place is vividly described. In her version before the Court she has categorically stated that both Sibul Mallick and Rabi Mallick were indiscriminately assaulting by using wooden baton and sickle. Both of them came together and the accused/appellants were so adamant that when PW2 along with her child tried to escape, Sibul Mallick appellant no.1 jumped and hit her with the wooden baton when the other appellant Rabi Mallick hit her

husband repeatedly with sickle. This is after Sibbu Mallick started hitting her husband namely, Chhotka Mallick with the wooden baton. This evidence of PW2 is corroborated by Dr. Nilima Das (PW5) and the same is reflected in the injury report of Naihati State General Hospital wherein it has been recorded that as per statement of the party, the patient was sleeping suddenly two brothers of Sushanta @ Chhotka, Sibbu and Raju Mallick attacked with wooden lathi and brick. Here it would be apposite at this stage to deal with the submissions advanced on behalf of the appellants that there are lacerated injuries and there is no incised wounds as is found from the medical reports. PW2, Saraswati Mallick is an eye-witness while PW1 and PW3 are post-occurrence witnesses, however, they have been consistent in their version relating to a wooden baton being in the hand of one of the appellants while there was a sharp edged weapons either axe or sickle in the hand of the other appellant. It would not be out of place to state that when a person is attacked while he or she is sleeping then in that case it may not be possible for him or her at that stage to vividly describe the nature of the deadly weapons used but the fact remains that the injuries which were inflicted upon the deceased were in ordinary course of circumstances sufficient to cause death. The same is corroborated by the expert's opinion when PW10 in his deposition before the Court stated that in his opinion the death was due to the effects of injuries ante-mortem in nature.

I have also assessed the issues on which the accused/appellants cross-examined the prosecution witnesses. The said issues are as follows:

- (i) The accused not being present at the spot or not having inflicted any injury to the deceased or PW2.
- (ii) Falsely implicated the accused on previous family dispute relating to ancestral property.
- (iii) The deceased being a habitual drunkard.
- (iv) The deceased had criminal cases against him.

All the issues so confronted to the prosecution witnesses were mostly in the form of suggestions and the same were of not such overwhelming facts that would dislodge the prosecution version of the attack being carried out by the appellants Sibu Mallick and Rabi Mallick upon the deceased Chhotka Mallick and his wife Saraswati Mallick (PW2). Further, as referred to above the statement of Saraswati Mallick (PW2) who happens to be an injured witness as well as eye witness read along with the statement of the post-occurrence witnesses create a chain of circumstance within which a ring of truth is attached. Thus, the circumstance cited by the prosecution establish a case of proof beyond reasonable doubt and there is no alternate circumstance which can be inferred from the prosecution evidence so relied upon in the instance case.

Accordingly, I am of the view that there cannot be any interference in the judgment and order of conviction and sentence so imposed by the learned Additional Sessions Judge, F.T.C. -3, Barrackpore, North 24 Parganas in connection with Sessions Trial No. 08(04)/2010 arising out of Naihati Police Station case no. 235/09.

Consequently, Criminal Appeal no. 426 of 2019 is dismissed.

The appellants are on bail, as such their bail bonds are cancelled. They are directed to immediately surrender before the learned Trial Court.

Pending connected applications, if any, are also disposed of.

Department is directed to send back the Lower Court Records immediately. A copy of the judgment be forwarded to the learned Trial court immediately for compliance regarding the directions given above.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)