

(2016) 03 TP CK 0043
In the Tripura High Court
Case No : Crl.A. (J) No. 04 of 2013

Agun Kumar Tripura and Others

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, Section 149, Section 302, Section 324, Section 326, Section 354, Section 376(2)(g), Section 448

Citation : (2016) 3 GauLJ 246 : (2016) 2 GauLT 994

Hon'ble Judges : Deepak Gupta, C.J. and S.C. Das, J.

Bench : Division Bench

Advocate : P.K. Biswas, Sr. Advocate, H.K. Bhowmik and P. Majumder, Advocates, for the Appellant; R.C. Debnath, Addl. Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Das, J.—1. This Criminal Appeal is directed against the judgment and order of conviction and sentence dated 21.12.2012, passed by learned Sessions Judge, South Tripura, Udaipur in Case No.ST 14(ST/S) of 2007, whereunder, learned Sessions Judge found the accused-appellants Agun Kumar Tripura and Brajya Kumar Tripura guilty for committing offence punishable under Section 354 read with Section 149 of IPC and sentenced them to suffer R.I. for 1(one) year and to pay a fine of Rs. 2000/- each, in default to suffer further R.I. for 1(one) month. Learned Sessions Judge also found the accused-appellants Pradip Kumar Tripura, Brajya Kumar Tripura and Agun Kumar Tripura guilty for committing offence punishable under Section 324 read with Section 149 of IPC and sentenced them to suffer R.I. for 1(one) year and to pay a fine of Rs. 1,000/- each, in default to suffer R.I. for 1(one) month and again found those three accused-appellants guilty of committing offence punishable under Section 302 read with Section 149 of IPC and sentenced them to suffer R.I. for life and to pay a fine of Rs. 10,000/- each, in default to suffer R.I. for 1(one) year and directed that the substantial sentences shall run concurrently.

2. Aggrieved, the accused-appellants preferred the present appeal.

3. We have heard learned Sr. counsel, Mr. P.K. Biswas assisted by learned counsel, Mr. H.K. Bhowmik for the appellants and learned Addl. P.P., Mr. R.C. Debnath for the State-respondent.

4. Briefly stated, prosecution case is that, 06.03.2006 A.D., was the date of counting of votes of the Village Council election of Tripura Tribal Areas Autonomous District Council (TTAADC) and in that election, the injured victim Smt. Padmabati Tripura (P.W.17) contested the election as a candidate of Congress (I) Party and lost.

4.1 P.W.14, the informant Manoranjan Tripura along with his wife P.W.13 (name kept withheld) and their three kids were in their house at village Bishnupur, under Sabroom Police Station, in the evening time at about 6/6:30 p.m.

4.2 The situation in the village was tensed since the counting of election was going on.

4.3 P.W.13, i.e. the wife of informant Manoranjan (P.W.14), is the daughter of P.W.17 Padmabati Tripura. The accused-appellant Pradip Kumar Tripura is a close neighbour of Manoranjan. On that day i.e. on 06.03.2006, the accused Pradip Kumar Tripura, Agun Kumar Tripura, Brajya Kumar Tripura alias Lakshamani Tripura, Rangalal Tripura and Sunil Tripura gathered in the house of the accused Pradip Kumar Tripura and they consumed liquor there. Since the mother of P.W.13 contested the election unsuccessfully, the accused persons who were supporters of C.P.I (M) party, started pelting brickbats and throwing crackers in the house of P.Ws 13 and 14. Being frightened Manoranjan (P.W.14) fled away from the house and took shelter in nearby jungle. It is the case of the prosecution that the accused persons trespassed in the house of P.W.13 and manhandled her and thereafter accused Sunil Tripura, Agun Tripura and Brajya Tripura committed rape on her (P.W.13). She raised alarm and hearing her alarm "Bachao", "Bachao" her parents deceased Dhani Kumar Tripura and Padmabati Tripura (P.W.17) started for the house of P.Ws 13 and 14. When they reached in front of the house of accused Pradip Kumar Tripura, all the five accused persons attacked them with lethal weapons and assaulted them severely causing injuries on their head and other parts of the body. After assaulting them, the accused persons fled away from the spot. After a while P.W.18 i.e. the son of P.W.17 and deceased Dhani Kumar Tripura, came to the house of P.Ws 13 and 14 to search his parents and at that time on search they found Dhani Kr. Tripura and Padmabati lying severely injured in front of the house of accused Pradip Kr. Tripura. P.W.18 Sachinanda Tripura rushed to the house of his grand-father Arjun Tripura (P.W.16) and informed him the incident. At once P.W.16 over telephone informed Sabroom Police Station and the information went to P.W.21, S.I. Samir Das as well as S.D.P.O., Sabroom who were on duty at Rupaichari R.D. Block where the counting of votes of Village Council of TTAADC was going on and there from they started for village Bishnupur. P.W.6 a Havildar of Bankul Police Out

Post, who was on law and order duty, in the meantime got information and he along with SPOs (Special Police Officers) of Bishnupur camp rushed to the house of Manoranjan Tripura and they shifted both the injured Dhani Kumar Tripura and Padmabati Tripura to the SPO camp and in the meantime SDPO and P.W.21 rushed there and with the vehicle of SDPO the injured persons were shifted to Sabroom Hospital from where they were immediately referred to T.S. District Hospital, Udaipur where Dhani Kumar Tripura was declared dead and Padmabati Tripura was given treatment and thereafter she was shifted to G.B. Hospital, Agartala. Padmabati Tripura was under treatment at G.B. Hospital, Agartala for about 45 days and ultimately survived.

4.4 It is the case of the prosecution that P.W.21 along with SDPO after arrival in the house of P.W.14 recorded his statement as FIR and P.W.21 started investigation on the spot since a cognizable offence was found committed. Ultimately P.W.22 Jatindra Das was entrusted the charge of investigation and he filed charge-sheet against the accused persons for commission of offence punishable under Sections 148/149/448/326/376(2)(g)/302 of IPC.

5. In course of trial, charges were framed against accused Agun Kumar Tripura, Sunil Kumar Tripura and Brajya Kumar Tripura for commission of offence punishable under Section 376(2)(g) of IPC and against all the 5(five) accused persons under Section 326 read with Section 149 of IPC and again under Section 302 read with Section 149 of IPC to which all the accused persons pleaded not guilty and claimed to be tried.

6. In course of trial, it was found that accused Rangalal Tripura and Sunil Tripura were juvenile and so they were referred to the Juvenile Justice Board, Udaipur. The trial against Agun Kumar Tripura, Brajya Kumar Tripura and Pradip Kumar Tripura were taken up by the learned Sessions Judge.

7. Prosecution examined 23 witnesses to prove the charges and also proved several documents and materials. Those are listed in the appendix to the judgment of the learned Sessions Judge.

8. In their turn, the accused persons adduced no defence evidence. They pleaded innocence. At the time of cross examination of the prosecution witnesses, it was suggested that Manoranjan had property dispute with Agun Kumar Tripura and that the accused persons belonged to C.P.I.(M) party and the informant as well as the victims belonged to the Congress (I) party and therefore, the accused persons were falsely implicated.

9. Learned Sessions Judge acquitted accused Agun Kumar Tripura and Brajya Kumar Tripura from the charge framed against them under Section 376(2)(g) of IPC but found them guilty under Section 354 read with Section 149 of IPC and that decision of the learned Sessions Judge has not been challenged by the State. Learned Sessions Judge also held that the charge under Section 326 read with Section 149 of IPC not proved but found all the accused persons guilty of committing offence punishable under Section 324 read with Section 149 of IPC

and that finding has not been challenged by the State.

10. The accused-appellants challenged the judgment of conviction and sentence as a whole mainly on the ground that the prosecution did not examine any independent witness from the locality/neighbourhood and that the identification of the accused persons allegedly in the darkness of the evening was doubtful. The injured victim did not disclose the names of the accused persons at the first instance and only at G.B. Hospital for the first time she disclosed the name of the accused persons and therefore, her evidence cannot be accepted as a gospel truth and further that there was enmity between the accused persons and the informant on land issue and also there was political rivalry since they belonged to different political parties and hence, the accused persons are entitled to get benefit of doubt.

11. Undisputed facts are-

(i) the accused persons and P.Ws 13, 14, 16, 17 and 18 were the residents of same village Bishnupur and very closely known to each other;

(ii) accused Pradip Kumar Tripura is a close neighbour of informant Manoranjan;

(iii) Counting of votes of TTAADC Village Council election held on 06.03.2006;

(iv) P.W.17 Padmabati Tripura contested the Village Council election unsuccessfully as a Congress (I) party sponsored candidate;

(v) accused persons were supporters of C.P.I.(M) party;

(vi) Dhani Kumar Tripura died a homicidal death because of the injury sustained by him on 06.03.2006;

(vii) Padmabati Tripura (P.W.17) also sustained injuries and was under treatment at G.B. Hospital for 45 days.

12. Prosecution examined 23 witnesses but the material witnesses are P.Ws 13, 14, 16, 17 and 18. Out of the other witnesses, P.Ws 6, 11, 12 and 19 first reached the place of occurrence and they shifted the injured persons from the place of occurrence to Bishnupur SPO camp and thereafter with the vehicle of SDPO, Sabroom the injured Dhani Kumar Tripura and Padmabati Tripura were shifted to Sabroom Hospital. FIR was recorded by P.W.21 in the house of the informant Manoranjan at about 22-40 hours.

13. Learned Sr. counsel, Mr. Biswas has submitted that FIR could have been lodged before P.W.6 when P.W.6 and other SPOs reached the spot before arrival of P.W.21. Since FIR was not lodged, when P.W.6 reached the spot, there was scope of embroidery and embellishment.

14. On careful perusal of the evidence of the material witnesses including the evidence of P.Ws 6, 11, 12 and 19 we find that though the incident occurred at about 6/6-30 p.m., no villager arrived at the spot because of the tensed situation after election, since the counting of votes was on and the results was out. The

victim P.W.13 was molested. P.W.14 fled away inside the jungle at the time of occurrence and after the accused persons left the place, he returned home and the two injured victims i.e. Dhani Kumar Tripura and Padmabati Tripura were lying severely injured on the spot when P.W.6 with SPOs came to the spot and shifted the injured persons to the hospital. Immediately thereafter P.W.21 with SDPO reached the house of Manoranjan i.e. the informant and his statement was recorded as FIR. We practically find no material delay in recording FIR. It is a settled law that in the light of totality of the evidence, a Court of fact has to consider whether the delay in lodging the FIR adversely affects the case of the prosecution. There may be cases where there is direct evidence to explain the delay. Even in the absence of direct explanation there may be circumstances appearing on record which provide a reasonable explanation for the delay. In the given facts and circumstances of this case, we find no reason to attach any importance to the submission of learned Sr. counsel that there was at all any delay in lodging the FIR. The attempt of every police personnel or every sensitive men should be first to save the life of the injured victims and here the P.W.6 and others i.e. the SPOs immediately shifted the victims to the hospital and there was no scope for them in that particular situation and circumstances to wait for recording FIR. No straight jacket formula can be imposed to say that the prosecution case should be a suspect simply because the FIR was not recorded at the first instance.

In the given facts of this case, we are of considered opinion that there was no material delay in recording of FIR and the FIR recorded by P.W.21, do not suffer from any sort of embroidery or embellishment.

15. P.Ws 13 and 14 made consistent statements about the incident which resulted in the ultimate physical assault of deceased Dhani Kumar Tripura and P.W.17 Padmabati Tripura. It is in the evidence of even the police personnel that there was a tensed situation in the village. P.Ws 13 and 14 were inside their house with their kids. They found all the five accused persons gathered in the house of accused Pradip Kumar Tripura and consumed liquor. Thereafter, they pelted brickbats and crackers in the house of P.Ws 13 and 14. Seeing this P.W.14 being frightened fled away to the nearby jungle. At that time, the accused persons trespassed in the house of P.Ws 13 and 14 and they got P.W.13 i.e. the victim prosecutrix and molested her. In the FIR the informant i.e. P.W.14 made clear statement of molestation of his wife (P.W.13). No allegation of rape was made in the FIR. Subsequently P.W.13 made statement that she was raped by three accused persons namely Agun Kumar Tripura, Brajya Kumar Tripura and Sunil Kumar Tripura. The trial Court disbelieved that part of her statement that she was raped by the accused persons. On that ground her entire statement cannot be thrown overboard.

16. It is the Courts duty to sift evidence, separating truth from falsehood and come to its conclusion about the guilt or innocence of the persons accused of the offence. Exaggeration or falsehood on point which do not attach core of the

prosecution story are not to be given undue importance, provided of course, there is a ring of truth in the story narrated by the witnesses.

17. P.W.13 in her deposition stated that Agun Tripura, Pradip Tripura and Brajya Tripura were known to her. The house of Brajya is very near to her house. Agun Kumar Tripura, Pradip Kumar Tripura and Brajya Tripura were supporters of CPI(M) party. Her mother was supporters of Congress (I) party. After the result of State assembly election was declared, the accused persons assembled in the house of Pradip Kumar Tripura and consumed liquor there. After that since her mother was unsuccessful in that election, the accused persons started firing crackers in her house. The accused Sunil and Rangalal were also with them. After that Sunil Tripura, Agun Tripura and Pradip Kumar Tripura entered into her hut. Out of fear her husband Manoranjan fled away. This part of the statement of P.W.13 has not been shaken in any manner in the cross examination. The witness is an illiterate tribal woman who cannot speak in any other language except the tribal language "kokborok". Though it was a TTAADC Village Council election but she stated it as Assembly Election and that cannot destroy her evidence.

18. P.W. 14 also made similar statement. He stated that his mother-in-law Padmabati Tripura contested ADC election as a candidate of Congress (I) party and when the result was out accused Agun, Pradip, Brajya, Sunil and Rangalal consumed liquor in the house of Pradip and from there they pelted stone in his house and also pelted burnt crackers in his house. Out of fear, he took shelter in the nearby jungle and from jungle, he heard Parulmala (P.W.13) raising alarm "Bachao, Bachao", but out of fear he did not come out and after about 50 minutes he came out, found his father-in-law and mother-in-law lying near the house of Pradip with bleeding injuries. This part of statement of P.W.14 has not been shaken in any manner.

19. From the evidence of P.Ws 13 and 14, it transpires that in the house of accused Pradip, all the five accused persons gathered. P.Ws 13 and 14 could guess that they consumed liquor and thereafter pelted brickbats and crackers to the house of P.Ws. 13 and 14. The reason as suspected by those witnesses was that Padmabati Tripura, mother of P.W.13 contested the election.

20. In the evidence of P.W. 17 we find, hearing cries of P.W.13. She and her husband Dhani Kumar Tripura proceeded towards the house of P.Ws 13 and 14. This part of the evidence makes it clear that the accused persons gathered in the house of accused Pradip Kumar Tripura and being over enthusiastic after election result was out, pelted birckbats and crackers to the house of the informant and entered in the house of the informant when the informant fled away in the jungle out of fear and the accused Agun and Brjya outraged the modesty of P.W.13.

21. The allegation of P.W.13 that she was raped by three accused may be a subsequent development since no such allegation was made in the FIR and the doctor on examination found no recent evidence of rape. The trial Court rightly arrived at a decision that the charge of rape was not proved but the charge of

outrage of modesty of the victim P.W.13 was proved.

22. As discussed hereinbefore, the evidence of P.Ws 13 and 14 cannot be wholly brushed aside simply because the allegation of rape was found to be doubtful.

23. The Apex Court in catena of judgments has held that the maxim "falsus in uno, falsus in omnibus" is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishment. It is, therefore, the duty of the Court to scrutinize the evidence carefully, and, in terms of the felicitous metaphor, separate the grain from the chaff. But it cannot adversely disbelieve the substratum of the prosecution case or the material part of the evidence and reconstruct a story of its own out of the rest. (Ugar Ahir V. State of Bihar, , AIR 1965 SC 277).

24. The Supreme Court reiterated this principle in the case of Yakub Abdul Razak Memon Vrs. State of Maharashtra, reported in , (2013) 13 SCC 1. We may, gainfully refer here Para 1405 of the judgment which reads as follows:-

"1405. The contradictions pointed out by the counsel on behalf of the appellant are minor contradictions and do not go to the root of the matter. With regard to the same, the following observations of this Court in State of U.P. v. Krishna Master , (2010) 12 SCC 324 are relevant: (SCC p.331, paras 15-17)

15. Before appreciating evidence of the witnesses examined in the case, it would be instructive to refer to the criteria for appreciation of oral evidence. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is found, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

16. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of the evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the Trial Court and unless the reasons are weighty and formidable, it would not be proper for the appellate court to reject the evidence on the ground of variations or infirmities in the matter of trivial details. Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the Police are meant to be brief statements and could not take place of evidence in the court. Small/trivial

omissions would not justify a finding by court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a short-coming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it.

17. In the deposition of witnesses, there are always normal discrepancies, howsoever, honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence and threat to the life. It is not unoften that improvements in earlier version are made at the trial in order to give a boost to the prosecution case albeit foolishly. Therefore, it is the duty of the Court to separate falsehood from the truth. In sifting the evidence, the Court has to attempt to separate the chaff from the grains in every case and this attempt cannot be abandoned on the ground that the case is baffling unless the evidence is really so confusing or conflicting that the process cannot reasonably be carried out. In the light of these principles, this Court will have to determine whether the evidence of eye-witnesses examined in this case proves the prosecution case."

25. P.W.17 is the injured witness of the occurrence. An injured witness normally is not expected to substitute an innocent person in place of his/her real assailants. An injured witness is a most reliable and truthful witness of the occurrence unless his/her evidence is vitiated for other consideration. P.W.17 indisputably is an injured witness. I.O. has collected her injury report which is found in the judicial record but the Medical Officer has not been examined. It was the duty of the prosecution to examine the Medical Officer. It was also the duty of the trial Judge to procure attendance of the Medical Officer and to get him examined. We have repeatedly held that a trial Judge cannot be a mere spectator but should try a criminal trial actively participating therein to find out the truth. It is the duty of the trial Judge to record all material evidence to unearth the truth. He will not only remain confined as to what the prosecutor did. For ends of justice law has empowered a trial Judge to do in any extent as permitted by law during the course of trial.

26. P.W.17 was severely injured which we find from the evidence firstly of the Police/SPOs i.e. P.Ws 6, 11, 12 and 19. They shifted the injured Dhani Kumar and Padmabati at first to Bishnupur SPO camp and then to Sabroom Hospital wherefrom both the injured persons were referred to T.S. District Hospital, Udaipur where Dhani Kumar was declared dead and Padmabati after treatment was referred to G.B. Hospital and she underwent treatment there for 45 days. P.Ws 13, 14, 16, 17 and 18 found Padmabati with severe injuries and she was not in a position to speak. That part of the evidence that Padmabati also sustained severe injuries because of the alleged assault by the accused persons

has been proved with enough evidence. In the cross examination of P.W.18 we find that P.W.18 stated that his mother was admitted in G.B. Hospital for 45 days for treatment. Since the fact that Padmabati was also severely injured in the incident, her evidence has to be considered with due regard as an injured witness.

In her deposition she stated - "6 years back, one day, at about 6.30/7 p.m., I heard my daughter Parul Mala raised alarm. Myself and my husband Dhani Kumar started proceeding towards her house. When we reached in front of the house of Pradip Kumar, he along with Agun, Brajya, Rangalal and Sunil started assaulting me by lathi and a loom. I fell down and sustained bleeding injuries on my forehead, nose and other parts. Now they started assaulting my husband. He also sustained bleeding injuries. Special Police Officers and Darogababu shifted me and my husband to hospital. Both of us were referred to Udaipur Hospital. In Udaipur Hospital, my daughter Parulmala informed me that my husband succumbed to the injuries. I was referred to G.B. Hospital, Agartala."

27. This part of the statement of P.W.17 has not been shaken in any manner in cross examination or otherwise. While an injured victim gave statement about a fact of assault, it has to be considered attaching due importance.

28. The Supreme Court in catena of decisions has held that an injured witness is a star witness of the occurrence. The evidence of an injured witness cannot be discarded simply because he was related with the deceased or that he had enmity with the accused persons.

29. In the case of Bhajan Singh & Ors Vrs. State of Haryana, reported in , (2011) 7 SCC 421 the Supreme Court in Para 36 has observed--

"The evidence of the stamped witness must be given due weightage as his presence on the place of occurrence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present at the time of occurrence. Thus, the testimony of an injured witness is accorded a special status in law. Such a witness comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness". Thus, the evidence of an injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. (Vide: Abdul Sayeed v. State of Madhya Pradesh, , (2010) 10 SCC 259; Kailas & Ors. v. State of Maharashtra, , (2011) 1 SCC 793; Durbal v. State of Uttar Pradesh, , (2011) 2 SCC 676; and State of U.P. v. Naresh & Ors., , (2011) 4 SCC 324."

30. In the case of Jodhan Vrs. State of Madhya Pradesh, reported in , 2015 Cri.L.J. 3291, the Supreme Court in Para 22 has observed--

"22. From the aforesaid summarization of the legal principles, it is beyond doubt that the testimony of the injured witness has its own significance and it has to be placed reliance upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and inconsistencies. As has been stated, the injured witness has been conferred special status in law and the injury sustained by him is an inbuilt- guarantee of his presence at the place of occurrence. Thus perceived, we really do not find any substance in the submission of the learned counsel for the appellant that the evidence of the injured witnesses have been appositely discarded being treated as untrustworthy by the learned trial Judge."

31. P.W.17 is an injured witness. It is abundantly proved that she was severely injured in the incident and we find no reason at all to discard her evidence only on the ground that she first disclosed the incident while reached at G.B. Hospital. The witnesses who shifted her to hospital stated that she was not in a position to speak but in her deposition she stated that she had a few words with police when she was taken to hospital and since she was not asked in details she did not speak many words. It shows that she was not in a humble condition to narrate the fact to the witnesses who shifted her to the hospital after the occurrence. I.O. examined her at G.B. Hospital on 08.03.2006. The incident occurred on 06.03.2006 in the evening. Her condition was serious after the incident since she received multiple injuries. Therefore, examination of the victim by the I.O. on 08.03.2006 cannot be doubted to say that there was scope of embellishment, embroidery or afterthought. The names of the accused persons as the assailants transpired in the FIR itself. There is a consistency in the sequence of events of the incident which has naturally come out from the deposition of all material witnesses. We, therefore, find no reason at all to draw any inference that because the victim was examined on 08.03.2006, her evidence should be a suspect and therefore, liable to be rejected. There is nothing to show even in the deposition of I.O. that he deliberately did not examine P.W.17 before 08.03.2006. There is no concomitant circumstance to suggest that the investigation was deliberately done with a view to give a particular shape of the case. P.W.22, the I.O. has given the details of investigation conducted on each day to day and he went to G.B. Hospital to examine the victim P.W.17 and examined her there on 08.03.2006 appears to be not shrouded with any suspicious circumstances. Therefore, the argument of learned Sr. counsel, Mr. Biswas, merits no consideration.

32. P.Ws 13 and 14 made consistent statement about the presence of all the accused persons in the house of accused Pradip Kr. Tripura. The accused persons entered in the house of P.W.13 and three accused persons outraged modesty of P.W.13. All the accused persons and the witnesses are the residents of the same village i.e. the village Bishnupur. They are closely known to each other. It is argued by learned Sr. counsel, Mr. Biswas that it was dark and the identification of the accused persons, therefore, was doubtful.

33. We find no strength in this argument advanced by learned Sr. counsel, Mr.

Biswas. In the first line of cross examination of P.W.17 she stated that accused Agun, Brajya, Pradip, Rangalal and Sunil Tripura were her co-villagers and hence were known to her. It is submitted that there was no electric light in the village which we find in the evidence of the police officer. So, the villagers were accustomed in leaving in shed light. Since the accused persons were co-villagers and closely known to each other and since the accused persons assaulted P.Ws 13 and 17, being closely known co-villagers, it was not impossible for them to identify the accused persons and such identification cannot be suspected in any manner.

34. The Supreme Court in the case of Machhi Singh Vrs. State of Punjab reported in , AIR 1993 SC 957 has observed that-

"Villagers living in villages where electricity has not reached as yet, get accustomed to seeing things in the light shed by the lantern. Their eye sight gets conditioned and becomes accustomed to the situation. Their powers of seeing are therefore not diminished by the circumstance that the incident is witnessed in the light shed by the lantern and not electric light."

35. We may gainfully refer here the ratio of that decision in the facts of the present case. Here the accused persons are co-villagers of the victims. They are closely known to each other. Though the incident occurred in the evening it was not impossible on the part of P.W.13 and P.W.17 to identify them. P.W.14 also stated that all the accused persons named in the FIR gathered in the house of accused Pradip and they consumed liquor and thereafter pelted brickbats and crackers in the house of P.W.14 and thereafter they trespassed in his house when he fled inside the jungle out of fear. This consistent statement of the witnesses makes it abundantly clear that there was no doubt in the identification of the accused persons.

36. The argument that neighbours were not examined has no substance at all. There is nothing in the evidence on record to show that any neighbour was eye witness of the occurrence or at least anybody from the neighbourhood came to the spot hearing the alarm. It is the definite statement of the victims that there was tensed situation after the counting of votes and the people were scared and nobody came to the spot even after hearing the alarm of the victims. Only SPOs shifted the victims to the hospital and they stated that none else were present except the son of victims. Under such circumstances, we find nothing that any material witness was withheld to draw any inference against the prosecution.

37. The last argument was that there was enmity which the witnesses stated in their earlier statement to I.O. and that statements have been marked as Exbt.A and Exbt.B. Defence has suggested that because of the dispute over land and because of belonging to different political parties, the accused persons have been falsely implicated.

38. It is a settled position of law that enmity cuts both the way. For enmity one may commit the offence and similarly for enmity one may be falsely implicated.

To substantiate either of the two, evidence is required. It is an undisputed position that Dhani Kumar Tripura died a homicidal death and the prosecution case was that the accused persons committed the murder. No other story has been put forward in the evidence on record to show that anybody else committed the offence. Under such circumstances, simply because a stand has been taken by the accused persons, the benefit of doubt cannot be given to them.

39. Normally in criminal cases, the burden of proof is on the prosecution to prove the ingredients of the offence. But in a case where the accused is found shrouded with suspicion and is enmeshed in an incriminatory network of facts, it becomes his duty to explain the circumstances yielding to an adverse inference against him and if he omits to do so or fails in creating a dent in the prosecution story, his omission assumes a sinister significance.

40. In the case at hand the accused persons could not create any dent in the prosecution story rather a bare examination of the evidence on record makes it abundantly clear that it is none but the accused persons committed the murder of Dhani Kumar Tripura and assaulted Padmabati Tripura with grievous injuries.

41. We, therefore, find no merit in this argument also made on behalf of the accused appellants.

42. In view of the discussions made above, we find no merit in the appeal and hence, the criminal appeal stands dismissed.

43. The appellants shall serve out the sentence.

44. Send back the L.C. records along with a copy of this judgment.