
(2010) 12 GAU CK 0015
In the Gauhati High Court
Case No : Criminal Appeal (J) No. 91 of 2006

Matilal Debnath @ Shanta Debnath

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2011) 1 GLT 156

Hon'ble Judges : Iqbal Ahmed Ansari, J; Arun Chandra Upadhyay, J

Bench : Division Bench

Advocate : N. Majumder, for the Appellant; D. Sarkar and R.C. Debnath, for the Respondent

Final Decision : Dismissed

Judgement

A.C. Upadhyay, J.—This appeal is directed against the judgment and order dated 17.09.2003, passed by the learned Additional Sessions Judge, Dharmanagar, North Tripura in S.T. No. 90 (NT/D) of 2002, whereby the accused/Appellant, Shri Matilal Nath @ Matilal Debnath @ Shanta, has been convicted u/s 302 read with Section 34 of the Indian Penal Code (for short "IPC") and sentenced to undergo imprisonment for life and also to pay a fine of Rs. 5,000/-, in default, to suffer rigorous imprisonment of two years.

2. The facts, leading to the filing of this appeal, may be narrated, in brief, as follows:

On 10.08.2000 at about 07.30 am at Pekucherra, under Panisagar Police Station, the accused persons, namely, Shanta @ Matilal Nath and Pradip Nath, in furtherance of their common intention assaulted Smti. Smriti Nath (PW 5) with sharp weapon and caused the death of Manti @ Santi Nath, aged about one and half years.

On 10.08.2000 at about 07.00 AM the accused/Appellant Shanta @ Matilal Nath

had come to the house of Smti. Sadhana Nath (PW 1) and started altercation with her son Pranab @ Babu. After sometime accused Shanta came out from the house of the informant and but then immediately after sometime the accused went back along with his brother accused Pradip, both armed with "dao" in hand. On seeing both the accused coming with "daos" in their hands, Smriti Nath (PW5), the daughter of the PW 1, who was standing with her daughter Manti (deceased) in her lap got terrified and ran away from the house towards the paddy field. The accused above named ran after them and after chasing a certain distance accused/Appellant Matilal dealt with a "dao" blow on the back of Smriti Nath (PW5), as a result of which, she fell down in the paddy field with bleeding wound and her one and half years old baby Manti (deceased) also dropped from her lap on the "Ail" i.e. small pathway in the paddy field. Accused Pradip, who accompanied Appellant Matilal, in the chase of helpless victims, dealt a "dao" blow on the victim Manti, who had fallen on the ground from the lap of her mother. As a result of the assault, baby Manti died on the spot.

3. The police on receipt of the Ejahar from PW 1, registered a case and launched investigation. In the course of investigation, the police recorded the statement of the witnesses as per provision of Section 161 Code of Criminal Procedure and also prepared the inquest report of the dead body, and sent the dead body for post-mortem examination.

On completion of the investigation, the investigating police officer submitted charge sheet against both the accused persons, namely, Manti @ Shri Matilal Debnath @ Shanta Debnath and Pradip Nath alleging commission of offence u/s 302 read with Section 34 of IPC.

The offences alleged against the accused being exclusively treble by the Court of Sessions, the case was committed to the Court of learned Sessions Judge, Dharmanagar, North Tripura for trial. However, as the accused Pradip absconded from the jurisdiction of the Court, the case as against him was adjourned sine-die by the trial Court.

During consideration of the charge, the learned Addl. Sessions Judge, Dharmanagar, North Tripura, finding prima facie materials against accused/Appellant Shanta, who was facing trial, framed formal charge against him u/s 302 read with Section 34 of IPC. On reading and explaining the charge, the accused/Appellant pleaded not guilty and claimed to be tried.

4. The prosecution adduced testimony of 15 witnesses in order to bring home the charge a fore noted against the accused/Appellant. On completion of recording of the evidence, the statement of the accused/Appellant was recorded as per provision of Section 313 Code of Criminal Procedure. However, the accused/Appellant took the stand of total denial during his examination u/s 313 of Code of Criminal Procedure. On conclusion of the hearing, the learned Sessions Judge convicted the accused/Appellant Matilal Nath @ Shanta u/s 302 read with 34 of IPC and sentenced him to undergo imprisonment as aforesaid, giving rise to this

appeal.

5. We have heard the arguments advanced by Mr. N. Majumder, learned Counsel for the Appellant and Mr. A. Ghosh, learned Additional Public Prosecutor, Tripura for the Respondent.

6. In order to appreciate the arguments advanced by the learned Counsel representing the respective parties and also to scrutinize the nub of the evidence on record, at the very outset, we propose to verify the core of the prosecution evidence.

7. PW 1, Smt. Sadhana Nath is the informant of the case and grandmother of the victim Manti Nath (deceased) and mother of injured Smriti Nath, PW 5. She stated that on the date of the incident at about 7.00 am, when she was sleeping in her house, her daughter, Sima (PW 6), told her that the accused/Appellant Shanta had come and he was calling her to come out. PW 6 further informed her that the accused/Appellant enquired about her son Babu by shouting. In the meantime her son Pranab @ Babu, who came back from the paddy field, rebuked the accused/Appellant Shanta. Thereafter, the accused/Appellant Shanta left for his house. After sometime the accused Appellant and his brother (absconder accused) Pradip came back, armed with "dao" in their hands. On seeing both the accused with "dao" in their hands, the daughter of the PW 1, i.e., Smriti (PW 5), got terrified and ran away towards paddy field by holding her baby child Manti in her lap.

8. According to P.W. 1, both the accused persons ran after her. On seeing the incident, P.W. 1 raised hue and cry. After chasing Smriti (P.W. 5), in the paddy field accused/Appellant Shanta gave a "dao" blow on the back of her daughter Smriti (P.W. 5). As a result of the assault Smriti (P.W. 5) fell down in the field, so also baby Manti. Absconder accused Pradip, who was accompanying his brother during the chase, straight away landed a "dao" blow on baby Manti, who had fallen on the ground.

9. P.W. 1 reiterated that on seeing her granddaughter Manti being dealt with "dao" blow, she had raised hue and cry and at that time immediately after the assault on the victims, the accused accosted her and had also tried to assault her, but fortunately, they could not do so and thus she got saved. P.W. 1 stated that Dilip Nath, on hearing her hue and cry, rushed to the place of occurrence and rebuked the accused and, thereafter, the accused persons left the place of occurrence. Immediately thereafter, other people of the locality rushed to the place of occurrence. P.W. 1 confirmed that her granddaughter Manti died on the spot, on account to the injuries sustained by her, and her daughter Smriti was laying on the ground with bleeding injuries on her person. She also confirmed that she had narrated the entire fact to the police officer, who after having recorded her statement in writing, read over and explained the content of Ejahar (Exbt.1) in which she put her signature.

10. P.W. 1, in her examination-in-chief, further clarified that accused/Appellant

Shanta prior to the incident had eloped with her daughter Smriti and stayed as husband and wife; and on account of their regular co-habitation, her daughter Smriti (P.W.5) had become pregnant. Then, the accused/Appellant Shanta brought P.W. 5 to keep her in the house of P.W. 1, where Manti, her granddaughter, was born. P.W. 1 also proved her signature in the inquest report prepared by the police officer on the dead body of the victim Manti. P.W.1 denied that the accused/Appellant Shanta had ever proposed to take her daughter Smriti (P.W. 5) back to his house. Rather P.W. 1 confirmed that prior to the incident, there was a scuffling in between the accused/Appellant and her son Babu @ Pranab.

11. In her cross-examination, P.W. 1 confirmed that her granddaughter Manti had fallen over the "ail" and her daughter Smriti had fallen on the paddy field. P.W. 1 denied that accused/Appellant Shanta was not involved in the commission of offence as alleged against him.

12. Before scrutinizing the testimony of other prosecution witnesses, in order to appreciate the truthfulness of the prosecution story, we consider it to be pertinent to quickly scan through the deposition of Smriti Nath (P.W. 5), who is one of the victims of the occurrence and an eyewitness of the incident.

13. According to the version of P.W. 1, both the accused chased P.W. 5, who had run away carrying baby Manti on her lap towards paddy field before being severely assaulted on her back, thereafter, brutally killing baby Manti, after she had fallen from the lap of her mother. P.W. 5 by corroborating the testimony of P.W. 1 stated in her deposition that on the day of occurrence at about 7.00 am, she was in the house of her mother. Accused/Appellant Shanta had come to her house and started altercation with her mother i.e. P.W. 1 and her brother Pranab. After the altercation, the accused/Appellant had left for his house and again after half an hour, accused/Appellant and his brother accused Pradip came to their house armed with "dao". On seeing the accused/Appellant having come with his brother Pradip with "dao" in hands, being frightened she fled away from the house with her baby daughter Manti in her lap. She stated that she was chased and pursued by the accused/Appellant and his brother accused Pradip from behind. Accused/Appellant Shanta reached her from behind and gave a "dao" blow on her back. As a result of which, she fell down in the paddy field and her daughter Manti also fell down in the "Ail" i.e., a narrow lane in the paddy field. P.W. 5 stated that when her daughter Manti fell down on the ground, the younger brother of accused/Appellant Shanta i.e. accused Pradip hacked her with the "dao" as a consequence of which Manti died on the spot. She further stated that the police officer had shifted her to the local hospital for treatment of her injury where she had to stay as indoor patient for eleven days, for treatment of her injury.

14. P.W. 5 also confirmed that accused/Appellant Shanta had married her at Badarpur in the Ashram by exchanging garlands and thereafter she became pregnant on account of regular cohabitation with accused/Appellant Shanta.

Subsequently, she was brought to her parent's house. According to P. W. 5 accused/Appellant later on refused to accept her as his wife, and that was the bone of contention between them.

15. In her cross-examination, P.W. 5 stated that she had not lodged any complaint in the police station against the accused/Appellant for marrying her forcibly. She also stated that her parents had no knowledge about her marriage with the accused/Appellant, Shanta, till the date of their returning from Badarpur. P.W. 5 in her cross-examination further stated that she had seen P.W. 7 (Dilip Nath), her mother (P.W. 1) and P.W. 4 (Arun Ch. Nath), while she ran away, being afraid of the accused persons, nobody dared to come forward to rescue her, being afraid of the accused persons as they had weapons with them. P.W. 5 also confirmed that Shanta had also given a "dao" blow over the victim Manti. She stated that she had become unconscious after the incident. P.W. 5 denied having love affairs with one Shyamal Nath prior to her leaving for Badarpur with accused/Appellant Shanta. She also did not admit that her mother (P.W. 1) used to sell country liquor in the market. P.W. 5 also denied that accused/Appellant Shanta had not killed the victim Manti.

16. P.W. 14 (Dr. Sankar Das), medically examined P.W. 5 (Smriti Nath) in connection with the case at Panisagar Health Centre. P.W. 14 in his deposition stated that on 10.8.2000, he examined Smriti Nath at Panisagar Health Centre and found the following injuries on her person.

(1) insized looking penetrating wound on right shoulder measuring 4" x 2" x 2".

(2) mussole fibers over the right scapula torn by sharp weapon.

17. The death of Manti is not disputed by the defense. However, P.W. 15 (Dr. Dipak Ch. Halder), Medical Officer of Panisagar Primary Health Centre, who carried out the post-mortem examination over the dead body of Manti, stated in his deposition that he had conducted the postmortem examination over the dead body of victim Manti, and found the following injuries on the dead body of the victim:

1. Chop wound over the mouth cutting the both angles of the mouth upto the tregass of ear both side.

2. Stab wound 3 cm x 2 cm x 1 on the middle of the chest over the sternum.

18. P.W. 15 stated that the cause of death of the victim was due to neurogistic shock and also due to hemorrhage resulting from the wound. He further stated that the injury on the deceased Manti was anti-mortem and homicidal in nature and that the injuries were sufficient to cause death of the victim in the ordinary course of nature. In his cross-examination, P.W. 15 revealed that the injuries were caused by sharp cutting weapons like dao, knife etc. and it would not be possible for the victim to sustain such injuries on account of any accident.

19. P.W. 6 (Smti. Shima Nath) is the younger sister of the victim Smriti (P.W. 5),

who stated in her deposition that on the date of occurrence at about 7.30 am in the morning accused/Appellant Shanta had come to their house and started altercation with her mother (P.W. 1) and her brother. Subsequently, about half an hour later accused/Appellant Shanta and his brother came to their house again with "daos" in their arms. On seeing them she immediately warned her sister Smriti (P.W. 5).

20. P.W. 6 also confirmed in her deposition that Smriti (P.W. 5) heeding to her warning ran away carrying Manti, her minor daughter in her lap. At that moment P. W. 6 being afraid of the presence of both the accused with "dao", closed the door and remained safely inside. After the incident, when P. W. 6 came out from the room and visited the place of occurrence, she discovered that the victim Manti had died on the spot and her sister Smriti (P.W. 5) was lying in the paddy field with bleeding injuries on her person.

21. P.W. 2 (Smt. Rekha Rani Nath) stated that on the date of the incident, at about 7 am, on hearing hue and cry, she rushed to the place of occurrence and found that the accused/Appellant Shanta and Pranab had been scuffling, she restrained them from doing so, and, thereafter, she returned to her house. After about half an hour the said incident, P.W. 2 once again heard a hue and cry near the place of occurrence. P.W. 2 rushed to the place of occurrence and found the dead body of the victim Manti lying on the ground and Smriti (P.W. 5) was lying in the paddy field with bleeding injuries on her person. P.W. 2 stated that Manti had died on the spot and the victim Smriti sustained injuries on her back. She also confirmed that accused Pradip had killed Manti and accused/Appellant Shanta also dealt a "dao" blow on the victim Smriti, P.W. 2 in her cross-examination denied that the accused/Appellant Shanta was unconscious at that time.

22. P.W. 3 (Jitendra Nath), knew both the victim Manti and her mother Smriti (P.W. 5). He stated that on the date of the incident, at about 7.30 am, he was on the northern side of the place of occurrence. On getting the information about the assault, he rushed to the place of occurrence and on reaching there he found that Smriti (P.W. 5) was lying in the paddy field with a cut injury on her person and her daughter baby Manti was lying dead. P.W. 3 stated that subsequently, the police officer, who came to the place of occurrence, shifted the victim Smriti to the hospital for treatment.

23. P.W. 3 (Jitendra Nath) and P.W. 4 (Arun Chandra Nath) are not the eyewitnesses of the occurrence. They came to the occurrence after hearing the hue and cry and found the victim Manti had died on the spot and her mother Smriti was lying in the paddy field in injured condition. They came to know from the first informant (P.W. 1) that Manti was killed by the accused. Cross-examination of these witnesses by the defence did not disclose anything substantial and considerable in favour of the accused/Appellant.

24. P.W. 7 (Dilip Nath) is also not an eyewitness. He came to the place of

occurrence after about half an hour and found that the victim was lying on the ground. However, P.W. 7 in his cross-examination stated that prior to the incident, on hearing hue and cry, he had gone to the house of the informant and found the accused persons were altercation with Pranab. P.W. 7 further stated that the informant and the accused persons were the next door neighbors and, as such, he knew them and that after returning from Badarpur, victim Smriti (P.W. 5) used to reside with her parents and at that time, Shyamal Nath used to visit their house. In fact, P.W. 7 also confirmed that there was a dispute between the accused/Appellant Shanta and Pranab as to why Shyamal used to visit their house.

25. P.W. 8 (Smti. Sefali Nath) and P.W. 9 (Smti Mamta Nath) were not examined by the prosecution as witnesses, and accordingly, the cross-examination of these two witnesses were also declined. P.W. 12 (Smti. Rita Rani Paul) and P.W. 13 (Sri Alak Ch. Das) are not eyewitnesses of the occurrence, they only confirmed that accused/Appellant Shanta married Smriti at Badarpur and had been living together as husband and wife after the marriage at Badarpur.

26. P.W. 10 (Gopal Sinha) was posted as Officer In-charge of Panisagar Police Station. P.W. 10 confirmed having recorded the First Information Report as per statement of P.W. 1. P.W. 10 confirmed in his deposition that after recording the statement of P.W. 1, he obtained the signature of the first informant in the FIR (Exbt. P. 1). P.W. 10 proved Exbt. P. 3, the inquest report of the dead body prepared by him and also confirmed that he had forwarded the injured Smriti (P.W. 6) to the Hospital for medical treatment. P.W. 10 also ascertained that he could not arrest the accused persons after the occurrence as they were absconding.

27. According to P.W. 10, he had gone to Pekucherra in connection with the GD. entry No. 216 dated 10.08.2000 on being informed by Pranab Nath. He stated that Pranab had sought police help to save his sister. P.W. 10 also stated that he had not recorded the statement of Pranab as a witness in the case.

28. In the mean time, P.W. 10 was transferred from Panisagar and, as such, he could not file the charge sheet in the case before leaving on transfer. Cross-examination of the investigating officer P.W. 10 by the Appellant's counsel did not disclose anything substantial to support the defense case.

29. P.W. 11 (Padmasen Chakma), Sub-Inspector of Police, submitted the charge sheet against the accused/Appellant after the case was endorsed to him by the Officer In-Charge, for investigation. P.W. 11 stated that he examined the victim Smriti Nath (P.W. 5) and also recorded the statements of other witnesses at Panchgram of Badarpur. P.W. 11 after collection of injury report and postmortem examination report finding a prima facie case against the accused persons filed charge sheet against them.

30. In his cross-examination P.W. 11 stated that he had examined Smriti Nath (P.W.5) on 20.11.2000 in the police station. He reiterated that he had not verified

as to where she was staying prior to that incident.

31. On perusal of the evidence laid by the prosecution, we have noticed that the informant P.W. 1 and the victim P.W. 5 were the key witnesses of the incident of assault upon P.W. 5 and killing of the victim Manti by the accused persons. Besides the above eyewitnesses to the occurrence, other witnesses reached the place of occurrence soon after the incident and found the victims lying on the place of occurrence with injuries on their person. The occurrence had taken place in broad daylight. Luckily, P.W. 5, Smriti, the victim of assault survived the attack made by the accused. P.W. 5 could narrate the depressing tale of her running away with her baby Manti to save their lives, and, the consequent dastardly and brutal assault made by the accused, which resulted in the death of her baby and severe injury to her person. It has further become visible from the evidence on record that apart from the eyewitnesses to the occurrence, other witnesses had rushed and reached to the place of occurrence on hearing the hue and cry of the informant P.W. 1. All the witnesses found P.W. 5 in injured condition and victim baby Manti lying dead at the place of occurrence.

32. At the time of argument the learned defense counsel Mr. Sunil Nath verbally submitted before the Court that the victim Smriti had an illicit relation with one Shyamal Nath for which the accused/Appellant Shanta being the husband had protested against it. He had been objecting to the visit of Shyamal in the house of the informant. Learned Counsel reiterated that Shanta had raised objection about the said matter to the informant and also the brother of the victim Smriti i.e. Pranab. On the other hand, referring to the statements of the P.W. 2 and P.W. 7 learned Counsel for the Appellant submitted that above said two prosecution witnesses also admitted the story of the defence by stating before the Court as witnesses that one Shyamal Nath used to visit the house of the informant P.W. 1, which had caused annoyance the accused/Appellant Shanta

33. Learned Counsel for the Appellant contended that the informant P.W. 1, her son Pranab and P.W. 5 tried to dishonour the accused/Appellant Shanta by giving indulgence to one Shyamal to develop love affairs with the victim Smriti (P.W. 5)

34. The above contention on behalf of the Appellant, except subtly discerning the motive behind the crime, could not justify that the common actions of the two accused persons in designing to kill the unfortunate and helpless baby Manti and attacking defenceless P.W. 5 with sharp weapons of assault, were due to such provocation, as aforesaid.

35. P.W. 5 had clearly, categorically and emphatically stated before the Court that the accused/Appellant Shanta had taken her to Badarpur and thereafter he had married her by exchanging garlands in the Ashram of Alok Sandhu in presence of many people. Thereafter they had been living at Badarpur as husband and wife. P.W. 5 Smriti had confirmed in her chief that on account of their regular cohabitation she had become pregnant and thereafter the accused/Appellant had brought her to her parent's house. She also stated that thereafter the accused/

Appellant Shanta had refused to accept her as his wife and it was the bone of contention of the dispute. According to P.W. 5, the accused/Appellant Shanta had denied the paternity of his child victim Manti and also tried to disown his marriage with the victim Smriti (P.W. 5). So, apparently, in view of the above discussion, the above plea raised by the learned Appellant's counsel that the accused/Appellant had become furious for the visit by one Shyamal Nath at the house of the informant is found to have no force, as the plea do not find any support either from the accused in his statement u/s 313 Code of Criminal Procedure or from the evidence on record. Rather, evidence of the witnesses that the accused had expressed his dissatisfaction and disgruntlement for the visit by one Shyamal in the house, where his wife was residing, may be interpreted to mean that the accused designed and executed the crime together with his brother.

36. On perusal of the evidence of the prosecution witnesses, more particularly P Ws 1, 2, 5, 6 and 7, it emerged to us that the defence admitted the fact that the victim Smriti was the wife of the accused/Appellant Shanta and the victim Manti was the daughter of the accused/Appellant born on account of his wedlock with the victim Smriti (P.W. 5). The story of the prosecution in this regard is well established that the accused Appellant and accused Pradip designed to kill the victim cold bloodedly in furtherance of their common intention.

37. The learned Counsel for the Appellant submitted before the Court that Investigating Officer did not record the statement of the brother of the victim Smriti namely Pranab, who had given the information to the police about the incident and had sought for help from the police to save his sister's life. Learned Counsel submitted that the statement of the I/O itself reaffirmed that Pranab was a vital witness of the instant case. According to the Appellant's counsel since the evidence of the witnesses established that there was a scuffle in between Pranab and the accused/Appellant Shanta prior to the instant incident had occurred, therefore, Pranab was one of the vital witnesses in the instant case. Learned Counsel for the Appellant reiterated that the omission of the recording the statement of vital witness like Pranab was fatal to the prosecution case and the accused/Appellant should get the acquittal on this count alone.

38. On the other hand, admittedly Pranab was not at all present in the place of occurrence, when the incident of murder of baby Manti and assault of P.W. 5 had taken place. Pranab was present only when the accused/Appellant Shanta alone had gone to the house of Pranab and rebuked his mother i.e. P.W. 1 and him unnecessarily. P.W. 10, the I.O., confirmed in his testimony that Pranab sought for police help only to save the life of his sister, since he had the knowledge that the accused/Appellant threatened his sister (P.W. 5) with dire consequence. Pranab was not present when the actual assault was carried out by the accused.

39. Evidence on record discloses that Pranab was not present when the occurrence took place. Rather, Pranab smelling the evil design of the accused Appellant had gone to Panisagar Police Station in order to seek police protection

to save the life of his sister and her baby. Pranab was not present when the incident of commission of murder of Manti had occurred. He had not seen the incident and at the time of lodging the information before the police officer of Panisagar Police Station, the I.O. had no information of commission of a cognizable offence. As a matter of fact, apparently Pranab was not a vital witness of occurrence. Therefore, according to us non-examination of Pranab as a witness by the Investigating Officer, can not be a fatal error in the prosecution case.

40. Although the learned Counsel for the Appellant would argue before us the victim Manti may possibly have died on account of sudden fall over a hard substance ("ail") from the lap of her mother Smriti, but the anti-mortem injury found by the doctor on the dead body of the deceased Manti, do not reflect that any grave injury was in fact caused due to fall on the hard substance. P.W. 15. categorically ruled out any possibility of any injury of the kind sustained by the deceased on falling on hard substances. Rather P.W. 15 found chop and stab wound on the person of the victim Manti.

41. PW15, the Medical Officer, Dr. Dipak Chandra Haldar unmistakably, stated in his deposition that he had found chop wound over mouth of the victim Manti. The cut was on both angles of the mouth up to the tregass of the ear both side and one stab wound measuring 3 cm/2 cm/1 cm on the middle of the chest over the sternum. P.W. 15 confirmed that both the injuries were anti-mortem and homicidal in nature, and, opined that both the injuries on the victim were caused by sharp cutting weapons like "dao", knife etc., sufficient enough to cause death.

42. The Medical Officer, P.W. 15, in his cross-examination, did not agree to the defense suggestion that the injuries of the victim Manti Nath could be caused on account of any accident. PW 15 categorically refuted the defense suggestion in his cross-examination and emphatically stated that the injuries on the kind sustained by the deceased could not be caused on account of accident. Thus, the defense story, regarding the death of victim Manti, on account of an accident, did not find even prima-facie support from the evidence on record and such a plea cannot be accepted in absence of specific evidence on record.

43. On perusing the case record it came to our notice that the evidence laid by Medical Officers Dr. Dipak Chandra Haldar (P.W. 15) and Dr. Sankar Das (P.W. 14), confirms injuries, as narrated by the victim of occurrence and the eyewitnesses. The statement of the witnesses with regard to the injury sustained by the victim, is fully corroborated by the medical witness, i.e. P.W. 8 and P.W. 15. Thus it can be inferred without any doubt that the injuries were caused by the accused persons and none else.

44. The defense story that the accused persons had come to assault Pranab is neither based on defense statement u/s 313 Code of Criminal Procedure nor on any materials on record. There is no trace of evidence on record that the accused had ever tried or searched for Pranab to assault, when both the accused came

armed with "dao" in their hands.

45. Intention of the accused persons to commit the crime is writ large on the sequence of events leading to the occurrence. Sharing of common intention is reflected in the action of the accused Pradip, who had joined the accused/Appellant Shanta, with a "dao" in his hand to commit the crime in furtherance of their common intention. If both the accused persons had no intention to commit the crime, they would not have chased the fleeing Smriti with baby on her lap.

The existence of common intention can be inferred from the attending circumstances of the case and the conduct of the parties. No direct evidence of common intention is necessary. For the purposes of common intention even the participation in the commission of the offence need not be proved in all cases. The common intention can develop even during the course of an occurrence. The circumstances of the present case clearly show that the accused persons had come on the spot with deadly weapons and inflicted injuries on Manti, obviously with the intention of causing her death.

So, inference can easily be drawn that they had come to the place of occurrence with the pre-conceived mind and, in furtherance of their common intention, committed the offence of murder by killing baby, Manti. If the intention of the accused persons had been to assault the victim Smriti only they would not have dealt "dao" blow upon one and half year old baby Manti. The evidence on record reaffirms that the accused Pradip had dealt with a blow on the victim Manti while she fell down from the lap of her mother P.W. 5 on the "ail" of the paddy field.

46. Baby Manti apparently had never stood against the interest of the accused persons in any manner. According to P.W. 5 accused/Appellant did not accept Manti as his legitimate child therefore accused/Appellant Shanta nurturing an evil motive against her as well as against baby Manti cannot be ruled out from consideration. Brutal killing of baby Manti, who was aged only one and half year old at the time of her death, reflects deep rooted evil design of the accused persons to eliminate her.

47. From the statements of the prosecution witnesses coupled with the conduct of the accused/Appellant it appears to us that on 10.08.2000 at about 7.30 am the accused/Appellant Shanta along with his brother accused Pradip, in the furtherance of their common intention to commit the murder of the baby Manti, had gone to the house of the informant for the second time again with full preparation by holding "dao" in their hand. The nature and type of injuries sustained by deceased Manti also revealed that the accused persons had brutally dealt with "dao" blows upon 11/2 years old helpless and defenseless victim.

48. At the examination of the accused Appellant u/s 313 Code of Criminal Procedure, nothing has been said about the alleged provocation made/caused by the injured, i.e., P.W. 5 or deceased victim i.e., baby Manti, just before the occurrence. Apart from some vague statements given by some of the P Ws during their cross-examinations, there is no clear evidence about any act of P.W.

5 or her daughter baby Manti, which could have caused grave and sudden provocation to the accused persons, immediately before or within a short period before the occurrence. In our opinion, there is no material before the Court to form any opinion to the effect that the two accused-Appellants were suddenly and gravely provoked by the deceased before the occurrence.

49. On the basis of the materials before the Court, it can be inferred that the accused Appellant Shanta and accused Pradip nurtured a resentment against the deceased and her mother P.W. 5, which was shimmering due to bitter family tie, which ultimately led to killing of innocent Manti and severely injuring P.W. 5. We find that the fact of fatal assault on the deceased by the accused-Appellant in furtherance of their common intention has been established beyond all reasonable doubt by adducing cogent and reliable evidence.

50. In the facts and circumstances discussed above, we do not find sufficient ground for interfering with the impugned order of conviction and sentence passed against the present Appellant by the learned Additional Sessions Judge, Dharmanagar, and North Tripura in S.T. No. 90 (NT/D) of 2002.

51. In the result, in the light of the considerations made above, the impugned judgment and the order of sentence are not interfered with. Accordingly this appeal stands dismissed.