
(2010) 08 GAU CK 0132
In the Gauhati High Court
Case No : Criminal Appeal No. 17 of 2005

Ratan Debnath and Others	Vs	APPELLANT
State of Tripura		RESPONDENT

Date of Decision : 19-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 148, 149, 300, 302, 304

Citation : (2010) 4 GLT 407

Hon'ble Judges : Iqbal Ahmed Ansari, J; C.R. Sharma, J

Bench : Division Bench

Advocate : H. Debnath and P. Majumder, for the Appellant; R.C. Debnath, for the Respondent

Judgement

C.R. Sarma, J.—The judgment and order, dated 28.02.2005, passed by the learned Additional Sessions Judge, North Tripura, Dharmanagar, in case No. S.T. 35(NT/D) 2004, is in challenge in this appeal. By the impugned judgment and order aforesaid, the learned Addl. Sessions judge has convicted the Appellants, namely, Sri Ratan Debnath, Sri Dilip Debnath, Sri Jagadish Debnath and Sri Jahar Debnath for the offences under Sections 302 and 323 read with Section 34 of IPC and sentenced them, for their convictions under Sections 302/34 of IPC, to suffer imprisonment for life and pay a fine of Rs. 5,000/-. The accused-Appellants were also sentenced to suffer rigorous imprisonment for six months for their conviction u/s 323/34 of IPC. It was directed by the learned trial Judge that both the sentences shall run concurrently and that the fine realized from the accused-Appellants should be paid to the witnesses, namely, Sri Sadhan Debnath, Sri Bhajan Debnath and Sri Sudhir Debnath, in equal share.

Being aggrieved by the said conviction and sentence, the Appellants have come up with this appeal.

2. We have heard Mr. H. Debnath, learned counsel and Mr. P. Majumder, learned Amicus Curie, appearing on behalf of the Appellants. We have also heard Mr. R.C.

Debnath, learned Special Public Prosecutor for the State-Respondent.

3. The prosecution case, as unfolded at the trial, in brief, may be stated as follows:

The family members of the victims, the informant and the Appellants are adjacent neighbours. Their houses are situated just by the side of public road. On 12.02.2003, at about 10.30 p.m., the accused-Appellants, being armed with lathi, rod and dao and also uttering filthy words, arrived at the gate of Shri Sudhir Debnath (P.W. 11) i.e. the husband of the informant, Smti Suniti Bala Debnath (P.W. 10) and father of the victims. Provoked by the said act of the accused-Appellants, Sri Sadhan Debnath(P.W. 4), who was the son of the informant (P.W. 10), went to the gate of their house to protest the act of the accused-Appellants. On his arrival at the gate, the accused-Appellants started assaulting him. On being so assaulted, P.W. 4 shouted for help and raised alarm. Hearing the alarm, raised by P.W. 4, his brothers, namely, Sri Bhajan Debnath (P.W. 7) and Sujan Debnath (deceased), went forward, followed by his parents and sister-in-law Smti Namita Debnath(P.W. 1) i.e. the wife of Sadhan Debnath (P.W. 4). On their arrival at the place of occurrence, the accused-Appellants assaulted them too with lathi, dao etc. The deceased Sujan Debnath was assaulted by Sri Jagadish Debnath with an iron rod, followed by other accused-Appellants and Sri Bhajan Debnath was assaulted by Sri Ratan Debnath. Alarm being raised by the victims, people from the neighbourhood gathered and the accused-Appellants fled away from the place of occurrence. Immediately after the occurrence, the injured persons were shifted to the Dharmanagar hospital for their treatment, wherein Sujan Debnath (hereinafter called the "deceased") succumbed to the injuries, on the following day.

4. On 13.02.2003, Smti Suniti Bala Debnath (P.W. 10) i.e. the mother of the deceased lodged a written information with the O/C, Panisagar P.S., calling upon him to take appropriate action. In the FIR aforesaid, it was mentioned that the informant's husband, namely, Sri Sudhir Debnath (P.W. 11) and her three son's sustained grievous injuries and that they had undergone treatment at the Dharmanagar Govt. Hospital. After receiving the said information, police registered a case under Sections 148, 149, 325, 326, 307 of IPC and launched investigation into the matter. During investigation, police visited the place of occurrence, prepared hand-sketch map of the place of occurrence, examined the witnesses and prepared the inquest report in respect of the dead body of the deceased and forwarded the dead body for post mortem examination. The Investigating Officer seized the wearing apparels of the deceased in presence of the witnesses and also seized a dao and a wooden stick from the house of Shri Jaladhar Debnath i.e. father of the accused-Appellants. It may be noted that, prior to receipt of the said information from P.W. 10, police received an information that some incident of beating had taken place between the two families at Charubasa and on the basis of the said information, after making G.D. Entry No. 437 dated 12.02.2003, the Investigating Officer arrived at the place of

occurrence and received written FIR from the informant. Therefore, it is found that the machinery of investigation got moved into action, on the basis of the said G.D. Entry No. 437, dated 12.02.2003, prior to receipt of the said written information from P.W. 10. Hence, the information received by the police, on the basis of which action was initiated was the first information report (FIR) and the written information received from P.W. 10 could be treated as written statement u/s 161 Code of Criminal Procedure. Be that as it may, police investigated into the matter and laid charge-sheet against the accused-Appellants and forwarded the Appellants to the Court to stand trial.

5. The case being exclusively triable by the Court of Sessions, the learned Addl. Sessions Judge, framed the charges under Sections 302 and 323 read with Section 34 of IPC and explained the charges to the accused-Appellants, to which they pleaded not guilty.

6. In order to prove the charges, brought against the accused-Appellants, prosecution examined as many as 14 witnesses, including the Investigating Officer and the Medical Officer, who conducted the autopsy in respect of the deceased. At the conclusion of the examination of the prosecution witnesses, the accused-Appellants were examined u/s 313 Code of Criminal Procedure. The accused-Appellants denied the allegations brought against them and declined to adduce any defence witness. Their plea was a denial one.

7. Mr. H. Debnath, learned Counsel and Mr. P. Majumder, learned Amicus Curie appearing for the accused-Appellants, taking us through the evidence on record and the impugned judgment and order, submitted that the prosecution failed to prove the allegations brought against the Appellants beyond all reasonable doubt and that the learned trial Judge committed error by recording the conviction and sentence without sufficient cogent and reliable evidence. The learned Amicus Curie stated that the victims sustained injuries due to sudden fight between both the parties and that the Appellants had no intention to cause death of the deceased. The learned Counsels, appearing for the Appellants, prayed for reversing the impugned judgment and order and acquittal of the Appellants.

Supporting the impugned judgment and order, the learned Special Public Prosecutor submitted that all the prosecution witnesses corroborated each Ors. on material point and that it has been established, beyond reasonable doubt, that the accused-Appellants, without any provocation, attacked the victims causing injuries to them and death to the deceased. The learned Special Public Prosecutor further submitted that the learned trial Judge rightly convicted and sentenced the accused-Appellants and that the impugned judgment and order needs no interference.

We have patiently heard the arguments, advanced by the learned Counsel appearing on behalf of both the parties and carefully gone through the evidence on record.

In order to appreciate the counter arguments, advanced by the learned Counsel

and to examine the correctness of the impugned judgment and order, we feel it appropriate to, briefly, reproduce the evidence on record as follows:

8. Shri Sadhan Debnath, who was the first person to face the assailants and got injured, deposed as P.W. 4. He stated that, on the date of occurrence, at about 10.30 p.m., while he was inside his house, the accused-Appellants, rebuking the members of his family, came to his gate, for which he went out to the gate to protest the said act of the accused-Appellants. According to this witness, all the four accused-Appellants, who were armed with dao, lathi and rod, started assaulting him and on being so assaulted and alarm being raised by him (P.W. 4), his brothers, namely, Sri Bhajan Debnath (P.W. 7) and Sujan Debnath (deceased) rushed to the place of occurrence to rescue him but, they were also assaulted by the accused-Appellants. He further stated that they (P.W. 4 and his deceased brother Sujan Debnath) were followed by their parents and P.W. 1 i.e. the wife of P.W. 4, who were also assaulted by the accused-Appellants. This witness further stated that due to the said assault, all of them had sustained bleeding injuries on various parts of their body. He clearly stated that Sri Bhajan Debnath and the deceased had sustained bleeding injuries on their head and other parts of the body. He also stated that hearing their cry, their neighbours arrived there and the accused-Appellants fled away towards their house, situated on the western side. This witness also stated that the occurrence took place on the road in front of their house, which was a middle point from the houses of both the families. According to this witness, all the injured persons were shifted to the Dharmanagar hospital, wherein Sujan Debnath succumbed to the injuries on the following day. He exhibited the Inquest Report prepared by the Investigating Officer, in respect of the dead body of the deceased, as Ext. 1 and the Seizure List as Ext. 2, by which the wearing apparels of the deceased were seized. This witness was duly cross examined on behalf of the defence. From his cross-examination, it stood established that both the families were adjacent neighbours and the gate of the house of the accused-Appellants was situated at a distance of 20 cubits from the gate of the victims. In his cross-examination, this witness stated that he did not know the reason for which the accused-Appellants had rebuked and attacked them. He denied the suggestion that he was not admitted in the hospital, requiring treatment for 3/4 days and that the accused-Appellants did not assault him, his parents and brothers. He also denied the suggestion that on the date of occurrence, he had rebuked Smti Minati Debnath, sister of the accused-Appellants in foul language, for which the accused-Appellant, Sri Jahar Debnath had raised objection and then he (P.W. 4) along with his brothers and parents went to the house of the Appellants and assaulted them, in which occurrence the deceased sustained injuries at the hands of someone and succumbed to the injuries. This witness expressed his ignorance about the injuries, if any, sustained by the accused-Appellants Jaharlal, Jagadish and Smti Kusum Debnath. Though this witness was duly cross-examined on behalf of the defence, no material contradiction could be elicited to shake his evidence regarding the assault caused by the accused-appellants.

9. Shri Bhajan Debnath (P.W. 7), who is one of the brothers of the P.W. 4 and the deceased, stated that, hearing cry of his brother (P.W. 4), he and his deceased brother along with their father went towards their gate and found that P.W. 4 was lying on the road in injured condition and that the accused-Appellants, who were standing near the gate with dao, lathi etc. in their hands assaulted them causing injuries on head and other parts of their body. He stated that the deceased and their father also sustained bleeding injuries on their heads and other parts of body. He further stated that hearing cry, their mother (P.W. 10) and P.W. 1, i.e., the wife of P.W. 4 arrived there but, they were also assaulted by the accused-Appellants. According to this witness, hue and cry being raised, by the victims and on arrival of the neighbours, the accused-Appellants went inside their house. Supporting the evidence of P.W. 4, he stated that the injured persons were taken to the Dharmanagar Govt., hospital for medical treatment, wherein the deceased succumbed to the injuries. This witness was also cross examined on behalf of the defence. He stated that the occurrence took place on the road between the boundaries of the houses of both the families. He denied the suggestion that on the date of the occurrence, his brother (P.W. 4) had passed indecent comments at the sister of the accused-Appellants and that in the evening also P.W. 4, followed by the other family members, went to the house of the accused-Appellants and assaulted them and that the deceased also sustained the injuries in the said attack.

10. Shri Sudhir Debnath, an inmate of the house of P.W. 4, deposed as P.W. 5. This witness, supporting the evidence of P.Ws. 4 and 7, stated that on the date of occurrence, at about 10.30 p.m., while he was in his bed, heard hue and cry towards the roadside and accordingly, he went out and found that Sujana Debnath (deceased), Sri Bhajan Debnath (P.W. 7), Shri Sadhan Debnath (P.W. 4) and Sri Sudhir Debnath (P.W. 11) were lying on the road in injured condition, sustaining bleeding injuries. He stated that he was informed by some of the injured persons that the accused-Appellants had assaulted them with lathi etc. He further stated that victim Sujana Debnath (deceased) succumbed to the injuries. In his cross-examination, this witness stated that, on the next day, he found that the gate of the accused-Appellants was in broken condition. He stated that he did not hear that the victims had entered the house of the accused-Appellants and assaulted them. However, he stated that he had noticed that accused-Appellant Sri Jahar Debnath also sustained injuries. Though this witness was cross-examined on behalf of the defence, no contradiction could be brought out to discredit his evidence regarding the injuries sustained by the victims.

11. Smti Namita Debnath i.e. the wife of P.W. 4, deposed as P.W. 1. She stated that, on 12.02.2003, at about 10.30 p.m., when she was in her kitchen, the four accused-Appellants arrived at the gate of their house uttering filthy words, for which her husband i.e. P.W. 4 went ahead towards the gate. She further stated that, immediately after departure of her husband, she heard an alarm raised by her husband and, accordingly, Sri Bhajan Debnath (P.W. 7) and Sujana Debnath (deceased), who were brothers of P.W. 4, rushed to save him and she also

followed her parents-in-law. According to this witness, after their arrival at the gate, they found P.W. 4 lying on the road with bleeding injuries on his head and P.W. 7 and the deceased being assaulted by the accused-Appellants, namely, Sri Jahar Debnath, Sri Jagadish Debnath, Sri Ratan Debnath and Sri Dilip Debnath with lathi, rod and dao. She clearly stated that the accused-Appellant namely Sri Dilip Debnath had assaulted her father-in-law Sri Sudhir Debnath (P.W. 11) with a lathi. This witness also stated that Sujan Debnath (deceased) was assaulted by the accused-Appellants while Sri Jagadish Debnath had assaulted him with an iron rod. She further stated that victim Sri Bhajan Debnath (P.W. 7) was assaulted by the accused-Appellant Sri Ratan Debnath. Supporting the evidence of P.Ws. 4, 5 and 7, this witness stated that all the injured persons were shifted to the Dharmanagar hospital for treatment wherein the deceased succumbed to his injuries, on the next day of the occurrence. In her cross-examination, this witness, corroborating the evidence of the above mentioned prosecution witnesses, stated that the accused-Appellants had assaulted the victims on the public road. She denied the suggestion that her husband (P.W. 4) had uttered slang words against Smti Minati Debnath, who was the sister of the accused-Appellants and that the injured persons had attacked the accused-Appellants by entering their house. She also denied the suggestion that a free-fight had taken place wherein deceased sustained injuries resulting his death.

12. Smti. Suniti Bala Debnath, W/o Sri Sudhir Debnath, who deposed as P.W. 10 is the informant. She, in her evidence given on oath, stated that on the date of occurrence, at about 10/10.30 p.m. while she was preparing meal in the kitchen, she heard the cry of her daughter-in-law Smti Namita Debnath (P.W. 1) and after hearing the said cry, she went out and saw that her sons, namely, Sri Sadhan Debnath (P.W. 4), Sri Bhajan Debnath (P.W. 7) and Sujan Debnath (deceased) were beaten by the accused-Appellants, namely, Sri Jagadish Debnath, Sri Jahar Debnath Sri Ratan Debnath and Sri Dilip Debnath. She further stated that the accused-Appellants' father, Sri Jaladhar Debnath also joined his sons. According to this witness, her husband (P.W. 11) and her daughter-in-law Smti Namita Debnath (P.W. 1) also rushed to the place of occurrence and the accused-Appellants assaulted all of them. She stated that her son Sujan Debnath, who sustained injuries, died in the hospital on the following day. P.W. 10 further stated that she sustained injuries on her left arm and that she had lodged the FIR after the arrival of the police in her house. This witness was duly cross-examined on behalf of the defence. She stated that she saw Sri Jaladhar Debnath in the place of occurrence. She also stated that the distance between the gate of her house and the gate of the house of the accused-Appellants was about 30 cubits and that the courtyard of Sri Jaladhar Debnath was by the side of the gate. She denied the suggestion that her son Sri Sadhan Debnath (P.W. 4) went to the house of the accused-Appellants and rebuked Smti Minati Debnath, sister of the accused-Appellants and that due to such act on the part of her said son, the quarrel had taken place. Though this witness was thoroughly cross-examined on behalf of the defence, no material contradiction could be elicited to

render her evidence unbelievable regarding the assault caused by the accused-Appellants.

13. Sri Sudhir Debnath, father of the deceased, deposed as P.W. 11. He stated that the accused-Appellants, namely, Sri Jahar Debnath, Sri Jagadish Debnath, Sri Ratan Debnath and Sri Dilip Debnath assaulted him, his sons, his wife and his daughter-in-law. According to this witness, he sustained injuries on his head as well as left shoulder and back etc. He also stated that his son Sujan Debnath succumbed to the injuries in the hospital. In his cross-examination, this witness stated that he was also admitted in the hospital and discharged therefrom after 1/2 days.

14. Sri Pranat Debnath (P.W. 3), a person from the same locality, was known to both the parties. He stated that, at the time of occurrence, he was returning from his shop and after arriving at the place of occurrence, he could hear hue and cry in front of the house of the accused persons and that proceeding further ahead he found that the accused-Appellants were assaulting Sri Sudhir Debnath (P.W. 11), Sri Sadhan Debnath (P.W. 4), Sri Bhajan Debnath (P.W. 7), Sujan Debnath (deceased) and Smti Suniti Bala Debnath (P.W. 10). According to this witness he raised hue and cry and due to arrival of the neighbouring people, the accused-Appellants fled away towards their house. He further stated that after the said occurrence, the injured persons were shifted to the hospital by an Auto Rickshaw and the injured Sujan Debnath succumbed to the injuries on the next day. Corroborating the evidence of the above mentioned prosecution witnesses, this witness also stated that the occurrence took place on the road in the middle point from the houses of both the parties. This witness was thoroughly cross-examined on behalf of the defence. He clearly stated that he did not notice any injury on the accused-Appellants. He also denied the suggestion that he did not see the incident and that he had falsely deposed at the request of the prosecution. He also denied the suggestion that the victim and the injured persons were his relative and as such, he had stated falsely. Except the said suggestions, which were categorically denied by this witness, no contradiction could be elicited to make his evidence unbelievable. Therefore, his evidence that he had seen the four accused-Appellants assaulting the injured persons remained unshaken. Though the defence made an attempt to establish that this witness was an interested witness and that he had stated falsely in favour of the prosecution, the said attempt could not be substantiated. There is nothing on record to find that this witness had any ill intention or grudge to falsely implicate the accused-Appellants. He clearly stated that at the time of occurrence, he was returning from his shop and he saw the occurrence himself. In view of the above, his evidence is quite believable. That apart, there is sufficient corroboration of the evidence of this witness from the evidence of P.W. No. 1, 4, 5 and 6 on material aspects.

15. Sri Basanta Debnath, who was also Anr. independent witness from the said locality, deposing as P.W. 2, stated that, on the night of the occurrence at about

10.30 p.m., while he was returning from his shop, he heard hue and cry and rushed to the gate of Sri Jaladhar Nath i.e. the father of the accused-Appellants. He found Sujan Debnath (deceased), Sri Sadhan Debnath (P.W. 4) and Sri Sudhir Debnath (P.W. 11) lying, in injured condition, outside their house. According to this witness, he arranged an Auto Rickshaw belonging to one Sri Sukhlal Debnath and sent the injured persons to the Dharmanagar hospital. He further stated that, subsequently, he came to know that the injured Sujan Debnath died in the hospital on the next day. This witness was also duly cross-examined on behalf of the defence. He clearly stated that the accused-Appellants and the victims were the next door neighbours and that he could hear that Smti Kusum Bala Debnath, Sri Jagadish Debnath and Sri Jahar Debnath were also admitted in the hospital for treatment. This statement of P.W. 2 indicates that some of the Appellants also sustained injuries. However, from the evidence of this witness, it stood established that in the said occurrence, Sujan Debnath, Sri Sadhan Debnath and Sri Sudhir Debnath sustained injuries and that Sujan Debnath succumbed to his injuries.

16. Sri Ramananda Debnath, who deposed as P.W. 6, was a witness to the seizure of the wearing apparels of the deceased. He exhibited the seizure list as Exbt. 3 and his signature thereon as Exbt. 3/2. He also exhibited the seized articles as Exbt. (i).

17. Sri Sunil Dey, who deposed as P.W. 8, stated that, on 13.02.2003, he went to the hospital to see Sujan Debnath and his family members and after his arrival in the hospital, he came to know that Sujan Debnath had expired. He was a witness to the Inquest Report, which was prepared by the Investigating Officer. He exhibited the Inquest Report as Exbt. 2 and his signature thereon as Exbt. 2/1. He did not state anything about the occurrence.

18. Sri Dilip Dey, who deposed as P.W. 9, stated that, on 13.02.2003, he went to the hospital and found Sujan Debnath in critical condition. He stated that Sujan Debnath succumbed to the injuries and that the Investigating Officer had prepared the Inquest Report. He was also a witness to the inquest made by the Investigating Officer.

19. Dr. Mantosh Debnath, who was a Medical Officer of Dharmanagar hospital at the relevant time, deposing as P.W. 14, stated that on 12.02.2003, he examined Sri Bhajan Debnath (P.W. 7), Sri Sudhir Debnath (P.W. 11), Sri Sadhan Debnath (P.W. 4) and performed the autopsy of the deceased i.e. Sujan Debnath.

(i) In respect of Sri Bhajan Debnath, he found the following injuries:

(1) Incised looking lacerated injury - 3" x 1/4 X 1/2" on temporal region of scalp.

(2) Contusion i.e. abrasion size 1" x 1" on occipital region.

(3) Abrasion - 1" x 1/4" over vertex."

According to the said Medical Officer, the injuries were simple and caused by

blunt object/weapon or forced and are recent in age.

(ii) In respect of Sri Sudhir Debnath (P.W. 11), the Medical officer found the following injuries:

On that day I also examined Shri Sudhir Debnath aged 65 years. On examination I found one incised looking lacerated wound 1 1/2" x 1/4" X 1/3" over temporal region nature simple caused by blunt weapon and object and recent injury.

(iii) In respect of Sri Sadhan Debnath (P.W. 4), the P.W. 14 found incised looking wound (lacerated) 3" x 1/4" x 1/3" over vertex, nature simple caused by blunt object."

The Medical Officer opined that the said injuries were caused by blunt weapon, simple in nature and recent in age.

During the post mortem examination of the dead body of the deceased i.e. Sujan Debnath, he found the following injuries:

... lacerated injury over occipital region, size 1 1/2" X 1/3". Ecchymoses below the left eye. I found the following injuries over the head and spinal canal (1) lacerated in wound over occipital region, (2) linear fracture over frontal bone (right side), (3) Membranes intact, (4) Brain and spinal cord congested and oedematous, (5) Sub dural hematoma in right front partial region containing about 100 cc of clotted blood found. Also found linear fracture of frontal bone.

According to the Medical Officer, the cause of death was antemortem injury caused by blunt weapon or object, on vital organs including brain. He also opined that the injuries were homicidal in nature. The time of death was 8 a.m. on 13.02.2003. The patient was admitted in the hospital at 11 p.m. on 12.02.2003 with a history of assault.

The Medical Officer was duly cross-examined on behalf of the defence. He denied the suggestion that the deceased died for want of proper treatment. The Medical Officer clearly stated that the deceased died mainly due to head injury caused by blunt weapon. The defence, despite cross-examination, could not demolish the evidence given by the said Medical Officer. Therefore, from the evidence of the Medical officer, it is found that, on 12.02.2003, the above mentioned persons i.e. Sri Bhajan Debnath, Sri Sudhir Debnath, Sri Sadhan Debnath and Sujan Debnath sustained injuries on various parts of their body including head. The injuries sustained by Sri Bhajan Debnath, Sri Sadhan Debnath and Sri Sudhir Debnath were simple in nature, caused by blunt object or weapon. The cause of death, as stated by the Medical Officer, was the injuries sustained by the deceased on vital organ i.e. brain, caused by blunt weapon or object. According to the prosecution version, the accused-Appellants were armed with dao, lathi and rod and they had inflicted injuries on various parts of the body of the injured persons.

20. Sri Surendra Roy, who was the Investigating Officer, deposed as P.W. 12. He stated that he went to the place of occurrence, on being directed by the O/C of

Panisagar Police Station, and he received the FIR at about mid-night. Exhibiting the Inquest Report, this witness stated that he conducted inquest of the dead body of deceased and forwarded the dead body for post mortem examination. He further stated that he had seized the wearing apparels of the deceased vide Exbt-2. He exhibited the seized articles as Exbt-(ii) and stated that due to his transfer, he handed over the Case Diary to the O/C. In his cross-examination, he stated that the information received, in the police station regarding the occurrence, was entered in the General Diary as GD. Entry No. 437 dated 12.02.2003. Though the Investigating Officer was cross-examined at length, no material contradiction in respect of the evidence of the prosecution witnesses, was proved through the Investigating Officer.

21. Sri Chand Mani Sinha (P.W. 13), who took over the investigation on 15.02.2004, stated that he submitted the charge sheet.

22. Now, in the backdrop of the above discussed evidence, it is found that the deceased Sujan Debnath succumbed to the injuries sustained by him in the said occurrence, while P.W. Nos. 4, 7 and 11 sustained simple injuries. Smti Namita Debnath (P.W. 1) clearly stated that the deceased was assaulted by Sri Jagadish Debnath with an iron rod and other accused/Appellants. Supporting the evidence of P.W. 1, all the eye witnesses i.e. Sri Sadhan Debnath (P.W. 4), Sri Bhajan Debnath (P.W. 7) and Smti Suniti Bala Debnath (P.W. 10), stated that the accused-Appellants had assaulted the victims with lathi, rod etc. Though the said witnesses were members of the same family, considering the facts and the circumstances of the case and they being victims of the same occurrence, are found to be most natural witnesses. That apart, their evidence has been duly corroborated, on material point, by the P.W. 3, who was an independent eye witness. That apart, the nature of the injuries sustained by the injured persons lends corroboration in favour of the prosecution evidence that the accused-Appellants were armed with blunt weapons like lathi and rod.

P.Ws. 2 and 3 were independent witnesses. Both of them knew the accused-Appellants as well as the injured persons. There is nothing on record to find that they had any reason or grudge to falsely implicate the accused-Appellants. Therefore, we see no reason to suspect the veracity of their evidence. P.W. 3, whose evidence remained unshaken, supporting the prosecution version. Stated that he saw the accused-Appellants assaulting Sri Sadhan Debnath (P.W. 4), Sri Bhajan Debnath (P.W. 7), Sri Sudhir Debnath (P.W. 11), the deceased and the mother of the deceased (P.W. 10). P.W. 5 Sri Sudhir Debnath, supporting the evidence of Sri Bhajan Debnath, Sri Sadhan Debnath and Sri Sudhir Debnath, stated that hearing hue and cry, he went out from his house and found the victims lying on the road in injured condition. This witness, who arrived at the place after the occurrence did not see the accused-Appellants assaulting the injured persons, but, as stated by him, he was informed by the injured persons that the accused-Appellants had assaulted them. Though the said evidence of P.W. 5 was hearsay evidence, there is sufficient corroboration in his evidence that

he saw the victims lying on the road in injured condition. According to P.W. 2, he heard hue and cry and approaching the place of occurrence, he found Sujan Debnath(deceased), Sri Sadhan Debnath (P.W. 4), Sri Sudhir Debnath (P.W. 11) lying in injured condition. He arranged to send them to the hospital for treatment.

23. The suggestions put to the prosecution witnesses, more particularly to P.W. 7, indicates that the accused-Appellants admitted that an occurrence had taken place, in which the victims as well as the deceased sustained injuries. According to the accused-Appellants, Sri Sadhan Debnath (P.W. 4) had passed some unwanted comments against Smti Minati Debnath (sister of the accused-Appellants) and that protest being raised by the accused-Appellants, Sri Jahar Debnath, Sri Sadhan Debnath (P.W. 4) led by his brothers, assaulted Sri Jahar Debnath and Ors. including Smti Kusum Bala Debnath and that in the said clash, which took place between both the parties, in the house of the accused-Appellants, the deceased had sustained the injuries. Of course, the said suggestion was denied by P.W. 7. Though the defence made an attempt to show that the injured persons were aggressors, they failed to substantiate the said plea. That apart, the defence declined to adduce any defence evidence in support of their plea. If the victim and the injured persons were the aggressors and had trespassed into the premises of the accused-Appellants for the purpose of assaulting the inmates of the accused-Appellants, then the accused-Appellants could have established the said fact by adducing evidence. But their silence, in this regard, negates their plea that the victims/injured persons were the aggressors. On the other hand, though the prosecution witnesses were duly cross-examined on behalf of the defence, their evidence regarding involvement of the Appellants, in committing the alleged offences, could not be demolished.

24. As revealed from the evidence of the Medical officer as well as the prosecution witnesses, more particularly the evidence of P.Ws. 2 and 3, the injured persons were immediately shifted to the Dharmanagar hospital, wherein they were examined by the Medical Officer on 12.02.2003 itself. The Medical officer, on examination, found that the injured persons i.e. Sri Bhajan Debnath, Sri Sadhan Debnath, Sri Sudhir Debnath and the deceased had sustained multiple injuries on their head and other parts of the body. The said medical evidence fully corroborated the evidence of the prosecution witnesses that the injured persons as well as the deceased sustained injuries in the occurrence, which took place on the night of 12.02.2003, at about 10.30 p.m., in front of their house. All the above mentioned witnesses categorically. Stated that the injured persons as well as the deceased were assaulted by the accused-Appellants, who were armed with dao, lathi and rod. The nature of injuries sustained by the injured persons as well as the deceased and the opinion given by the Medical Officer regarding use of the weapon in causing the injuries, substantiate the prosecution version that the accused-Appellants had used lathi and rod in assaulting the victims.

25. In the light of the above discussion, we find sufficient corroboration in the

evidence of the prosecution witnesses sufficiently indicating involvement of the accused-Appellants. From the above discussed evidence on record, it stood established that the injured persons and the deceased sustained the injuries at the hands of the Appellants. Therefore, we find no difficulty in holding that the prosecution could establish, beyond all reasonable doubt that the accused-Appellants had assaulted and caused injuries to the injured persons as well as the deceased. Admittedly, the deceased died due to the injuries sustained by him, in the said occurrence. In view of the above, we find it safe to hold that the death of the deceased and the injuries sustained by Sri Sadhan Debnath, Sri Bhajan Debnath and Sri Sudhir Debnath, which were simple in nature, were caused by the accused-Appellants. Therefore, we are of firm opinion that the learned trial Judge rightly convicted and sentenced the accused-Appellants for the offence u/s 323 read with Section 34 of IPC.

26. With regard to the conviction recorded u/s 302/34 IPC, we are required to examine if the accused-Appellants are guilty of the offence of murder as defined u/s 300 IPC and as such liable to be convicted u/s 302 IPC. From the above discussed evidence, it stood established that the deceased died due to the injuries sustained by him at the hands of the Appellants. It has also been revealed that the accused-Appellants were armed with dao, lathi and rod. As indicated by the Medical Officer, the deceased sustained injury on the occipital region with fracture in respect of frontal bone resulting congestion of the brain and spinal cord. Due to the said injuries, sustained by the deceased, there was clotting of about 100 cc of blood in the right front partial region. Therefore, the injury sustained by the deceased on his head was the prime cause of his death. The nature of the injuries sustained and the weapons used by the accused-Appellants, clearly suggest that the said injuries were caused by using blunt weapons. Therefore, as the deceased died due to the injuries caused by the accused-Appellants, it was a case of culpable homicide.

27. Except in the cases, mentioned in Section 300 IPC, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-

secondly,- if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of a person to whom the harm is caused; or-

thirdly,- if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-

fourthly,- if the person committing the act knows that it so imminently dangerous that it must, in all probability cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

The fourth Exception to Section 300 IPC provides that culpable homicide is not

murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner. In such cases, it is immaterial, which party offers the provocation or commits the first assault.

Under the fourth Exception, if the death is caused without any premeditation in the heat of passion upon a sudden quarrel without the offender's having taken undue advantage or acted in a cruel or unusual manner, the death does not amount to murder. Culpable homicide and murder involve the killing of a person. What distinguishes these two offences is the presence of a special mens rea which consists of four mental attitudes in the presence of any of which the lesser offence becomes greater. These four mental attitudes are stated in Section 300 IPC distinguishing murder from culpable homicide. The punishment for culpable homicide not amounting to murder has been prescribed in Section 304 IPC. Section 304 IPC reads as follows:

Section 304. Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

Under Section 304 IPC, depending upon different circumstances, two kinds of punishments have been prescribed. Firstly, under Part-I of Section 304 IPC, if the act by which death is caused is done with intention of causing death or such bodily injury as is likely to cause death, the punishment is imprisonment for life, or imprisonment of either description for a term which may extend to ten years and fine. Secondly, if the act is done with knowledge that it is likely to cause death but without any intention to cause death or such bodily injury as is likely to cause death, the punishment is imprisonment of either description for a term which may extend to ten years, or with fine, or with both. Therefore, if the act is done with intention of causing death or such bodily injury as is likely to cause death then the offender is liable under Part-I of Section 304 IPC. Whereas, if the act is done with knowledge that it is likely to cause death but without any intention to cause death, then the offence committed by the person would fall under Part-II of Section 304 IPC. In view of the above, in a murder case, the Court is required to make a proper appreciation of the evidence and of law before reaching the conclusion that the case proved is culpable homicide, because all "murder" is "culpable homicide" but not vice versa. "Culpable homicide" sans "special characteristics of murder" as defined in Section 300 IPC is culpable homicide not amounting to murder

28. From the evidence of P.Ws. 1 and 4, it is found that, initially the accused-Appellants came to the gate of the said witnesses by uttering filthy words and with a view to protest their action, P.W. 4 i.e. Sri Sadhan Debnath, who was in his house, went towards the gate and on his arrival, at the gate, the accused-Appellants had assaulted him. He sustained simple injuries caused by blunt weapon. Alarm being raised by P.W. 4, asking for help, his brothers, including the deceased, his wife and parents rushed to the place of occurrence i.e. to the gate to rescue him (P.W. 4) and they were also assaulted by the accused-Appellants. Sri Bhajan Debnath(P.W. 7),who went to the place of occurrence along with the deceased, also sustained simple injuries caused by blunt weapon. Their father Sri Sudhir Debnath (P.W. 11) also sustained simple injuries, caused by blunt weapon, but the deceased sustained injuries on the head and spinal canal effecting the brain and spinal cord. The deceased sustained the said fatal injuries because of his participation, in the occurrence, for the purpose of saving his brother (P.W. 4), who sustained simple injury. Had he not gone to the place of occurrence, he would not have sustained the injuries. Fact remain that other injured persons i.e. his brothers and father sustained simple injuries. If the Appellants had any intention to kill the P.W. 4, P.W. 7 and P.W. 11 they, considering the type of weapons they had, could have caused death or grievous injuries to the P.W. 4, P.W. 7 and P.W. 11 also. That apart, according to the prosecution witnesses, more particularly, P.W. 4 and P.W. 7, the accused persons were aimed with lathi, rod and dao. According to Medical evidence, the injuries sustained by the deceased were caused by blunt weapon. Hence, the medical evidence rules out use of a sharp weapon like dao, indicating that they did not use the dao, though they had possessed dao. Therefore, if the assailants had any intention to kill the deceased then they could have used dao. Non-use of dao and use of blunt weapon only as they did not respect of other accused persons suggests that it is doubtful, if the Appellants had any intention to kill the deceased. That apart, from the facts and circumstances of the case it does not transpire that the Appellants had targeted the deceased or that they had any intention to kill the deceased. Absence of such intention can be inferred from the fact that the said injured did not die at the place of occurrence. The injured succumbed to the injuries on the following day in the hospital. If they had any intention to cause his death, they, could have finished the life of the deceased in the place of occurrence itself

29. Therefore, considering the various sequences of occurrence and the nature of injuries sustained by the other injured persons as well as the weapons used by the accused-Appellants, it is found that it was a sudden fight, which took place in the heat of passion upon a sudden quarrel and as such the act committed by the accused-Appellants in respect of the deceased is covered by Exception 4 to Section 300 IPC. There is nothing on record to find that the accused-Appellants had any premeditation to cause the death of the deceased or that, initially, they had made any attempt to cause hurt to the deceased. The deceased sustained injuries because of his voluntary appearance in the place of occurrence to save

his brother (P.W. 4), who cried for help. Therefore, the injuries sustained by him were a accidental.

30. Considering the above facts and circumstances of this case, as revealed from the evidence on record, we find no sufficient reason to believe that the accused-Appellants had assaulted the deceased with intention of causing death or causing such bodily injury, knowing that the same was likely to cause death. Therefore, in our considered opinion, this is not a case of murder, but a culpable homicide not amounting to murder, covered by Section 304 IPC.

As indicated above, there is no material on record to show that the accused-Appellants had caused the injuries in respect of the deceased with intention of causing death or that the injuries which were likely to cause death were inflicted intentionally. Therefore, the offence committed by them is not covered by Section 304 Part-I IPC. Admittedly, the deceased sustained injuries on his head. The head being a vital part of the body, any injury on the head may cause death. It is not difficult for any person of common prudence that injury caused on the head is likely to cause death of the person concerned. From the medical evidence, it is found that the deceased sustained injuries on his head effecting his brain and spinal cord. Therefore, we have no hesitation in holding that the accused-Appellants, while causing the said injuries on the head of the deceased, which is a vital part of the body, had the knowledge that the injuries caused by them were likely to cause death. Admittedly, the said injuries sustained by the deceased were the cause of his death. In the light of the above, we find it safe to hold that the accused-Appellants committed the offence u/s 304 Part-II IPC. In the light of the above discussion, we find it to be a fit case to convert the conviction from Section 302 read with Section 34 IPC to Section 304 Part-II read with Section 34 IPC and accordingly, we do so.

31. Consequent upon the said alteration of conviction recorded against the accused-Appellants, the sentence of imprisonment for life is modified requiring the accused-Appellants to undergo rigorous imprisonment for 6(six) years and pay fine of Rs. 2,000/- (Rupees two thousand)only each, in default, suffer rigorous imprisonment for Anr. period of 3(three) months each for their conviction under Sections 304 Part-II/34 IPC. We do not interfere in respect of the conviction and the sentence recorded under Sections 323/34 IPC and other directions made by the learned trial Judge.

32. With the above modification in respect of the conviction and sentence u/s 302 IPC, the appeal is partly allowed. Return the Case Records.