HIGH COURT OF TRIPURA
AGARTALA

Crl. A. No.2 of 2024

Sri Subrata Nath
S/o. Late Shiv Nath,
Resident of South Hurua,
P.S- Dharmanagar,
District-North Tripura.

------ Appellant

Versus

The State of Tripura

------ Respondent

For Appellant(s)	:	Mr. P. K. Biswas, Sr. Adv, Mr. P. Majumder, Adv, Mr. Rishiraj Nath, Adv, Ms. S. Debbarma, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P.
Date of hearing	:	11.11.2024
Date of delivery of Judgment & Order	:	18.11.2024
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This criminal appeal is filed under Section 374 of Cr.P.C. challenging the judgment and order of conviction and sentence dated 04.01.2024 delivered by Learned Sessions Judge, North Tripura, Dharmanagar in connection with case No.S.T.(T-1) No.22 of 2019. By the said judgment, the appellant has been convicted under Section 323 of IPC and sentenced to suffer RI for 6(six) months and also to pay fine of Rs.1000/- i.d. to suffer imprisonment for a further period of 1(one) month.

2. Heard Learned Senior Counsel Mr. P. K. Biswas assisted by Learned Counsel Mr. P. Majumder, Learned

Counsel Mr. Rishiraj Nath and Learned Counsel Ms. S. Debbarma for the appellant and also heard Learned P.P. Mr. Raju Datta representing the State of Tripura.

3. In course of hearing, Learned Senior Counsel drawn the attention of the Court that initially the charge was framed by the Learned Trial Court under Section 307 of IPC but on conclusion of trial, Learned Trial Court below has found the appellant to be guilty under Section 323 of IPC and sentenced him accordingly. According to Learned Counsel, in this case the prosecution has failed to explain the actual PO before the Learned Trial Court below because in the FIR it was mentioned that the PO was on a drain but the IO shown the PO on the bank of a pond but the witnesses of the prosecution stated that the PO was on the backside of the dwelling hut. There was no clear explanation from the side of prosecution in this regard. Furthermore, as alleged by the prosecution no blood stained earth was seized by IO during investigation nor any wearing gamcha which according to prosecution was stained with blood was seized by IO during investigation and furthermore, there is no evidence on record from the side of prosecution by what weapon actually the offence was alleged to be committed by the accused i.e. the present appellant. Furthermore, the witnesses of the prosecution during their examination before the Court made improved version of their statement. Prosecution has failed to explain those improved version before the Court in course of hearing of argument before the Learned Trial Court. Thus, the evidence of prosecution

suffers from various infirmities but the Learned Court below without considering the materials on record found the appellant to be guilty and convicted him under Section 323 of IPC for which the interference of the Court is required and urged for allowing this appeal by setting aside the judgment of the Learned Court below.

4. On the other hand, Learned P.P. representing the State respondent submitted that the Learned Trial Court below after considering the materials on record rightly and reasonably found the appellant to be guilty and convicted him accordingly and there is no merit in the appeal filed by the appellant because the appellant by the trend of cross-examination could not discard the evidence on record of the alleged victim and more so, at the time of alleged occurrence save and except the victim and the appellant no other persons were there but soon after the occurrence he disclosed the fact to his parents and their evidences could be shattered at any length by the appellant-accused. So, Learned P.P. finally urged for dismissal of this appeal upholding the order of sentence and conviction delivered by the Learned Trial Court. Considered.

5. In the case at hand, prosecution was set into motion on the basis of an FIR laid by one Ranadhir Nath to O/C, Dharmanagar PS alleging inter alia that on 08.10.2017 at about 6 pm the present appellant called his son Biprajit Nath from home and cut the wind pipe of his throat and also cut the blood vessels of his legs and palms with a sharp knife in an attempt to

kill him. On hearing hue and cry, people of the area came and witnessed the occurrence and rescued him from the nearby drain in a half-dead condition. He was taken to Dharmanagar Hospital immediately and finding his condition critical he was advised to be taken outside the State for better treatment. Hence, the informant laid the FIR.

6. On receipt of FIR, O/C, Dharmanagar PS registered Dharmanagar PS case No.75 of 2017 under Section 307 of IPC and the IO on completion of investigation laid charge-sheet against the appellant under Section 307 of IPC. The case was committed to the Court of Learned Sessions Judge by the Jurisdictional Magistrate and before the Learned Trial Court, formal charge under Section 307 of IPC was framed against the appellant and the same was explained to him in Bengali to which he pleaded not guilty and claim to be tried.

7. During the trial, to substantiate the charge, prosecution before the Learned Trial Court has adduced in total 10nos. of witnesses and relied upon some documents which were marked as exhibits in this case. Finally on conclusion of trial, Learned Trial Court below found the appellant guilty and convicted him under Section 323 of IPC and this appeal has arisen before this Court challenging the said judgment delivered by Learned Sessions Judge, North Tripura, Dharmanagar.

8. Now before coming to the conclusion, let us discuss about the evidence on record produced before the Learned Trial Court by the prosecution.

9. PW-1, Pradip Kumar Singha deposed that about 2/3 years back one day police personnel came to the house of Ranadhir Nath of their locality and he went there when he could know that the appellant caused hurt to the son of Ranadhir Nath. He could not say anything about the case of the prosecution and also stated that he did not witness the occurrence of offence.

10. PW-2, Debashish Nath deposed that about 3 years back on a day in the evening he was at Dharmanagar Town and got information that his brother Biprajit Nath was assaulted by Subrata Nath and he was removed to Dharmanagar Hospital. On receipt of this information immediately he rushed to Dharmanagar Hospital and found his brother under treatment with a neck cut injury and came to know that the injury was caused by Subrata Nath. Later on, he could know that on that day at the material time, his brother was alone in the house when the appellant-accused came to their house and called his brother and asked him to see whether thieves came to their house to take their cocks or not and took him to the backside of their house. That time, his other family members were present to their grocery shop infront of their house. Then the appellant-accused attacked his brother and cut his throat with a knife and he also cut the arteries of the hands and legs of his brother. During treatment his brother was referred to AGMC & GBP Hospital.

During cross-examination, he stated that his brother stated to him that the accused cut his throat with a knife.

Attention of the witness was drawn to the aforesaid statement recorded by IO but the said statement was not found in the statement recorded by IO under Secion 161 of Cr.P.C. and this witness is also not the eye-witness of this case.

11. PW-3, Ranadhir Nath is the father of the victim. He deposed that he lodged this case on 08.07.2017. On that day, his son Biprajit Nath was with him in his shop. That time, he was aged about 15 years. Subsequently, his son went back to house to say his wife to bring a cup of tea for him. Subrata Nath i.e. the appellant also came to their house and remained there for quite some time and his wife took a cup of tea for him. After some time, his son rushed to his shop with some bleeding injuries on his neck, palm and leg and he wrapped his neck with a 'gamcha' and he saw he was pulled with blood. Somehow he could say that Subrata Nath in absence of his mother took him to the back side of his house and on the pretext that he caught a thief while stealing cocks from their house. He compelled his son to remove his shirt and thereafter caused sharp-cutting injuries on his neck. His son tried to save himself from indiscriminate assault with knife by Subrata Nath and his son sustained severe cut injuries on his palm and thereafter Subrata Nath also caused bleeding injury on his leg. Thereafter, Subrata Nath left his son in the back side of his house and fled away. Seeing his son, he raised alarm and somehow managed a e-rickshaw and removed him to Dharmanagar Hospital for treatment. During treatment, his son was referred to AGMC & GBP Hospital, Agartala and his

son had to undergo treatment for about a month and on the date of incident, he laid the complaint to O/C, Dharmanagar PS and his ejahar was prepared by one police personnel at Dharmanagar PS as per his version. The witness identified his signature on the ejahar marked as Exbt.-1. He further stated that he sold a piece of land to Subrata Nath and he had a dispute with him over the price of the said land and thus Subrata took revenge.

During cross-examination, he stated that during investigation, police visited the spot and he has shown the blood stain on the ground and also shown the blood stained wearing apparels and 'gamcha' to the police. He made statement to the police. He was confronted with the statement that Subrata Nath forcibly removed the shirt of his son and also stated that his son rushed to his shop with bleeding injuries and at the material time his neck was wrapped with a 'gamcha' but such portion of statement was not found in his statement recorded by IO under Section 161 of Cr.P.C. He did not say to police that while his son tried to save himself form indiscriminate assault by the accused with a knife, his son received severe bleeding injuries on his both hand palm. He also confronted with the statement that he stated to IO that Subrata Nath left his son to the backside of his house and fled away. Attention of the witness was also drawn but the said part of statement was also not found in the statement of witness recorded by IO under Section 161 of Cr.P.C.

12. PW-4, Rina Rani Nath is the wife of the informant. She deposed that on 08.10.2017 her husband was at their shop

infront of their house and her son was with him in the shop. At the material time, Subrata Nath came to their house and enquired about his husband and she stated that her husband is in their shop and in the mean time, her son returned back to home and stated that her husband asked for a cup of tea. Thereafter, she took a cup of tea for her husband and Subrata Nath left their house and her son remained in their dwelling hut. As her son was remaining alone so her husband asked her to go back to home as jackles moves around in the night in their locality. In the mean time, her son rushed to the shop of her husband when he was pulled with blood and his neck was wrapped with a 'gamcha' and he received severe sharp cutting injuries on his neck, both hand and leg. He was immediately removed to Dharmanagar Hospital and on the way her son stated that he was assaulted by Subrata Nath with a knife. During treatment her son was referred to AGMC & GBP Hospital and he remained there under treatment for a month. She further stated that Subrata Nath is a resident of their locality and he had a dispute with her husband with regard to the price of piece of land which was sold to him by her husband.

During cross-examination, she stated that during investigation when police visited the PO, they have shown the blood stain on the ground and also shown the blood stainned wearing apparel and 'gamcha' to the police. Nothing more came out relevant.

13. PW-5 is the victim. He deposed that on 08.10.2017, he was in their dwelling hut and was listening music in the headphone. Door was closed. He was with his father in his tong shop situated nearby their house and her father asked him to say his mother to bring a cup of tea, as such, he returned back to home and asked her mother to take a cup of tea for her father. At the material time, Subrata Nath was in their house and he was talking with his mother but while her mother prepared tea and taken it to his father in his shop that time Subrata Nath departed from their house. While her mother left, Subrata Nath also left the house and he was alone. After a little while, Subrata Nath again came and knocked the door when he was listening music and asked him to open the door and said that someone came to steal cocks. He asked him to accompany, as such, he opened the dood and took him to the backside of their house. As he was on a white shirt, he asked him to remove his shirt as it would be visible even in the darkness. At his instance on good faith, he removed his shirt and thereafter he suddenly caught hold of him from his back and cut his throat with a knife and he received severe cut injury on his neck in the front side and while he tried to resist and rescue himself again the accused caused severe cut injury on the palm of his left hand. During clutches he also caused other cut injuries on his right hand and right leg just above the ankle. He fell down on the ground that time Subrata thought that he might have died and he fled away. Immediately thereafter, he went to the shop of his father and narrated the

incident. He further stated that at the material time few persons were there in the shop of his father and they also saw and heard himself and after that he was brought to Dharmanagar Hospital and immediately he was shifted to Hospital at Agartala.

During cross-examination, he stated that his father and uncle accompanied him to Agartala. He was confronted with the statement that he stated to IO that as he was on a white shirt so the appellant asked him to remove his shirt as it would be visible even in the darkness. Attention of the witness was drawn to his statement recorded by IO under Section 161 of Cr.P.C. but the said portion of statement was not found in the statement of victim recorded by IO under Section 161 of Cr.P.C. He also could not say the name of the persons who were present to the shop of his father as he was not in a position to recognise them. He was further confronted with the statement that he was with his father in his tong shop situated nearby their house and when his father asked him to say his mother to bring cup of tea and as such he returned home and asked his mother to take a cup of tea for his father. Attention of the witness was further drawn but the said part of statement was also not found in the statement of witness recorded by IO under Section 161 of Cr.P.C. He was further confronted with the statement that he stated to IO while his mother left, Subrata Nath also left his house and he was alone and after sometime, Subrata again came and knocked the door when he was listening music and asked him to open the door stating that someone came to steal cocks. Attention was

further drawn and on drawing attention, witness admitted that no such aforesaid portion of statement was found to his statement recorded by IO under Section 161 of Cr.P.C.

14. PW-6, Ashish Paul deposed that about 3 years back one day at about 6.30 pm he was watching TV in his dwelling hut when he could hear some chaos outside of his house and he came out and found Biprajit Nath with bleeding injury on his neck and he was lying on the ground infront of the shop of his father. Huge persons were present and after that, the victim was taken to Hospital. He was declared hostile by the prosecution and his portion of statement was marked as Exbt.-2 subject to confirm by IO.

During cross-examination, he stated that he had moderate relation with Ranadhir Nath.

15. PW-7, Haradhan Bose deposed that on transfer of previous IO, he took up investigation of the case and during the part of his investigation, he perused the previous investigation report and recorded the statement of witness Ashish Paul and some other witnesses under Section 161 of Cr.P.C. and he confirmed Exbt.-2 but as he was transferred so he handed over the case docket to O/C of the PS.

During cross-examination, he stated that during the part of his investigation, he did not see any other statement of the witness Ranadhir Nath and Biprajit Nath and he recorded the statement of the informant Ranadhir Nath on 04.06.2018 and

during investigation, Ranadhir Nath did not produce the blood stained wearing apparels with blood stained 'gamcha'.

16. PW-8, Laxmikanta Singha was also declared hostile by the prosecution and his portion of statement was marked as Exbt.-3 subject to confirm by IO.

During cross-examination, nothing came out relevant.

17. PW-9, Swapan Singha deposed that on 15.10.2018 he was posted at Dharmanagar PS as Sub-Inspector of Police and on that day this case was endorsed to him for investigation due to transfer of previous IO. He visited PO and examined some witnesses but he recorded the statement of informant Ranadhir Nath. He collected injury report of the victim Biprajit Nath from AGMC & GBP Hospital and he submitted charge-sheet against the appellant Subrata Nath under Section 307 of IPC.

During cross-examination, he stated that in the FIR as well as in the first statement of the informant recorded under Section 161 of Cr.P.C, Ranadhir Nath did not disclose anything regarding motive of the charge-sheeted accused behind the commission of alleged crime. He did not collect any document from the complainant to show that the victim Biprajit Nath had collected any extra money from the accused Subrata Nath toward sale of his land to accused Subrata Nath denying the terms and conditions of their earlier agreement. He further stated that the place of occurrence of this case was near a pond and the shop of the complainant was situated at a distance of

100 meters from the house of the complainant towards North-West side. He also could not say the exact location of the pond.

18. PW-10, Dr. Sankar Sarkar deposed that on 09.10.2017 he was posted as Registrar, Department of Otorhinolary, Head and Neck Surgery, AGMC, Agartala. On that day, one patient Biprajit Nath came in connection with Dharmanagar PS case No.75 of 2017 was admitted with alleged homicidal lacerated wound on the neck, both hands and right leg. He examined the patient and found the wound on the end part of the neck and injury was slight and caused by blunt object and it was simple in nature and he identified the report marked as Exbt.-4(as a whole).

During cross-examination, he stated that he did not mention the father's name of the patient in the report and as per report, the patient was discharged on 19.10.2017. He further stated that he mentioned as per record in the column case and symptoms and record means the admission form which was filled up by the concerned Medical Officer in the Emergency. He could not say the name of the Medical Officer who was posted at Emergency on that relevant point of time. The patient was referred to GBP Hospital from Dharmanagar Hospital but that was not mentioned in the report and during examination he found that the wounds were stitched and it was done in Dharmanagar Hospital.

These are the sum and substances of the evidence on record of the prosecution in respect of determination of the

charge, produced by the prosecution before the Learned Court below.

19. I have heard argument of both the sides and also gone through the record of the Learned Court below. Admittedly in this case prosecution could not produce or prove the alleged weapon of offence for marking exhibit. Nor there was any effort from the side of IO to seize the same. Prosecution also could not give any proper explanation regarding the actual place of occurrence of offence because in the FIR it was mentioned that the alleged PO was on a drain. But when the witnesses turned up to the witness box before the Learned Court below, they stated that the alleged incident took place on the backside of dwelling hut and the IO when turned to the witness box he stated that the place of occurrence was near a pond. In this regard, the prosecution could not explain anything in course of hearing of argument.

20. Now if we go through the evidence of victim, it appears that at the time of alleged occurrence save and except the victim and the appellant no other persons were there. The victim soon after the occurrence appeared to the tong shop of his father and narrated the incident. But save and except the parents of the victim the other witnesses did not submit anything regarding the allegation of the prosecution.

21. Now if we go through the evidence of the parents of the victim as well as the victim, it appears that those three witnesses during their examination before the Court deviated from their

earlier statements made to IO. Prosecution also could not explain anything in this regard in course of hearing of argument.

22. More interestingly in this case, the prosecution to substantiate the charge failed to produce any blood stained sand or the alleged 'gamcha' by which the victim according to the prosecution wrapped his neck. Prosecution also could not explain anything why those alamats were not seized by IO during investigation. Prosecution also in course of trial before the Learned Trial Court also failed to produce the said alamats before the Court to substantiate the charge.

23. As already stated, there was no effort from the side of the prosecution to recover the alleged weapon of offence. Now, if we go through the evidence of the medical officer who in course of his examination very specifically stated that the nature of injury was slight inflicted by blunt weapon but the prosecution story was that the injury was caused by a knife. Knife cannot be termed as blunt weapon. The concerned medical officer, PW-10 in course of examination did not submit anything regarding sustaining of other injuries on other parts of the body by the victim. There is also no explanation from the side of prosecution in this regard.

24. In course of hearing of argument, Learned Senior Counsel Mr. P. K. Biswas relied upon the following citations:

In **Syed Ibrahim v. State of Andhra Pradesh** bearing case No.**SLP(Cri) No.2787 of 2005** dated 27.07.2006 reported

in **AIR 2006 SC 2908** wherein Hon'ble the Apex Court in para No.11 observed as under:

> **"11. In the background of principles set out above it is to be seen how far the evidence of PW1 is cogent and credible. Merely because he was the solitary witness who claimed to have seen the occurrence, that cannot be a ground to discard his evidence, in the background of what has been stated in Section 134 of the Evidence Act, 1872 (in short 'the Evidence Act'). No particular number of witnesses are required for the proof of any fact, material evidence and not number of witnesses has to be taken note of by the courts to ascertain the truth of the allegations made. Therefore, if the evidence of PW 1 is accepted as cogent and credible, then the prosecution is to succeed. It is to be noted that PW1-father of the appellant, claimed to have set law into motion. The testimony of PW1 was to the effect that after witnessing a part of the occurrence he had to run to the police station and had come back within about five minutes. The evidence on record dis-proves veracity of this part of his evidence. The occurrence is alleged to have taken place and at about 10 P.M. the FIR was lodged at the police station at about 11.30 P.M. PW1 and the investigating officer accepted that it will take nearly one hour for somebody on foot to reach the police station considering the distance of the alleged place of occurrence and the police station. There is another interesting factor PW1 accepted in the cross examination that the report (Ex.B1) was written in the police station in the presence of sub inspector and a constable. But in his examination-in-chief. he had stated that he had got written the report by somebody at a hotel and the person normally writes petitions. No particulars of this person who allegedly scribed the report, not even his name, was stated by PW-1. His evidence is further to the effect that he alone had come to the police station where the report was lodged and that is how he admitted that the report was written at the police station. This may not appear to be that important a factor considering the illiteracy of PW1. But there is another significant factor which completely destroys the prosecution version and the credibility of PW1 as a witness. He has indicated four different places to be the place of occurrence. In his examination in chief he stated that the occurrence took place in his house. In the cross-examination he stated that the incident took place at the house of his wife-the deceased's mother. This is a very important factor considering the undisputed position and in fact the admission of PW1 that he and his wife were separated nearly two decades ago, and that he was not in visiting terms with his wife. Then the question would automatically arise as to how in spite of strained relationship he could have seen the occurrence as alleged in the house of his wife. That is not the end of the matter. In his cross examination he further stated that the incident happened in the small lane in front of the house of his wife. This is at clear variance with the statement that the occurrence took place inside the house where allegedly he, the deceased, his son-PW2 and daughters PWs. 3 and 6**

> **were present. That is not the final say of the witness. He accepted that in the FIR (Ex. B1) he had stated the place of occurrence to be house of the deceased. Though the FIR is not a substantive evidence yet, the same can be used to test the veracity of the witness. PW1 accepted that what was stated in FIR was correct. When the place of occurrence itself has not been established it would be not proper to accept the prosecution version."**

In **Mani Ram and Others v. State of U.P.** bearing case No.**Crl. A. No.238 of 1993** dated 13.05.1994 reported in **1994 Supp(2) SCC 289** wherein Hon'ble the Apex Court in para Nos.7 and 9 observed as under:

> **"7. Learned counsel appearing for the appellants strenuously urged that Prabhoo Nath, PW 2 is none else but the real brother of the deceased and, therefore, he is a highly interested witness and as such his sole testimony should not be accepted in convicting the appellants without any corroboration from independent source. He also submitted that the evidence of the solitary eyewitness Prabhoo Nath is not consistent with the medical evidence which fact by itself is sufficient to hold that he is not an eyewitness to the incident but a got-up witness which fact has been ignored by both the courts below and, therefore, the findings of the two courts below suffer from serious infirmity and the conviction of the appellants could not be sustained. On a close scrutiny of the evidence of Prabhoo Nath, PW 2 and the evidence of Dr Tekariwal, PW 1, we find that there is great force in the aforesaid submissions.**
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> **9. Apart from the above facts it may be pointed out that Prabhoo Nath, PW 2 admitted in cross-examination that soon after the appellants emerged from the sugarcane field and when the appellant Santram challenged Basdeo, he started running and at that point of time the appellant Mani Ram was standing at a distance of 60-70 yards towards east-west and the appellant Agya Ram who was standing at distance of about 4-5 feet from Mani Ram chased Basdeo and both of them fired at him from their kattas while the deceased was running. This statement clearly goes to show that the deceased was fired at from behind when he was running and the appellants Mani Ram and Agya Ram were chasing him. That being so the bullet or pellet injuries should have been caused on his back or at least somewhere behind his shoulder but as stated earlier according to the medical evidence and the post-mortem report injury 7 was caused by a firearm. A perusal of injury 7 will distinctly go to show that there were multiple gunshot wounds on an area 17 x 13 cms on right shoulder and front of upper arm and outer part but there was no injury either on the back or anywhere behind the shoulder. There is no other gunshot injury except injury 7. Neither the doctor who first examined the injured Basdeo nor the doctor who performed the post-mortem found any injury on the back or back portion of the shoulder to lend support**

> **to the evidence of the sole eyewitness Prabhoo Nath. It is well settled by long series of decisions of this Court that where the direct evidence is not supported by the expert evidence then the evidence is wanting in the most material part of the prosecution case and, therefore, it would be difficult to convict the accused on the basis of such evidence. If the evidence of the prosecution witnesses is totally inconsistent with the medical evidence this is a most fundamental defect in the prosecution case and unless this inconsistency is reasonably explained it is sufficient not only to discredit the evidence but the entire case. In the present case as noticed above the evidence of the solitary witness Prabhoo Nath is wholly inconsistent with the medical evidence and, therefore, it is difficult to accept him as an eyewitness to the occurrence and therefore it would not be safe to base the conviction on the solitary evidence of such a witness. There is no other evidence to support the prosecution case. Consequently the conviction of the appellants deserves to be set aside."**

In **State of Haryana v. Inderaj and another** bearing case No.**Crl. A. Nos.532-33 of 1984** dated 30.03.1993 reported in **AIR 1994 SC 115** wherein Hon'ble the Apex Court in para No.7 observed as under:

> **"7. These appeals are against the acquittal and since the High Court has reversed the findings of the trial Court, to satisfy ourselves, we have gone through the evidence of the two eye-witnesses carefully. Their evidence shows that they are interested witnesses. Therefore, their evidence requires to be the scrutinised carefully. So far as PW 4 is concerned he admitted in the cross-examination that he went to the school at 9 a.m. and he made further admissions to the effect that being a Republic Day there was a function in the school and there were certain items like Flag Hoisting Ceremony, speeches, sports and prize distribution. The witness being a student aged 18 years is expected to know the time taken in respect of the each event that took place. If we add up the timings then as pointed out by the defence counsel the whole function must be over after 1.15 p.m. in which case the presence of this witness at the place of the occurrence becomes highly doubtful. The witness also admitted that he had to cover a distance of three miles from the school to reach the place of occurrence. In the cross-examination, he admitted that he is an interested witness. Then coming to the evidence of PW 3, no doubt, he gave the F.I.R. at about 1.40 p.m. but again the doubt would be whether the occurrence took place at 12 noon or earlier. In any event his conduct appears to be unnatural. He deposed that the deceased who is no other than his nephew, was going in the Gali and he followed him 10-15 paces behind him but the way he has described his presence at the scene of the occurrence there is some doubt regarding his presence. In this context, it becomes important to note that the place of occurrence is within a short**

> **distance and there are number of houses in the vicinity but none of the residents has been examined at least to show that this witness was present immediately after the occurrence and the prosecution has not adduced any evidence to that effect. The evidence of local Sarpanch DW 1 (Ram Rikh) is that his house was very close to the place of occurrence and there is nothing in cross-examination which warrants rejection of his evidence. DW 1 has stated that at about 10.30 am he came out and saw the dead body. Being the resident of the house which is very close to the place of occurrence, his version cannot be rejected. If his version is to be accepted then the presence of PW 3 just at the time of occurrence becomes doubtful. The prosecution has not examined any other person from the locality. PW 3 being highly interested witness, has also made certain improvements regarding the nature of the weapon used and since the whole case rests on his sole testimony without any corroboration, we think it is highly unsafe to convict the respondents in the appeals against acquittal. For these reasons these appeals are dismissed."**

In **Amar Singh and others v. State of Punjab** bearing case No.**Crl. A. No.161 of 1978** dated 17.02.1987 reported in **1987 CRI. L. J. 706** wherein Hon'ble the Apex Court in para Nos.10 and 11 observed as under:

> **"10. In this connection, we may refer to the evidence of the second eye-witness P.W. 6 Anokh Singh. In his examination-in-chief this witness sought to support the prosecution case, but in cross-examination he stated in clear and unequivocal term that he did not see Piara Singh deceased receiving any injury at the hands of the accused. No reliance, therefore, can be placed on the evidence of P.W. 6. So far as P.W. 4 Murta Singh is concerned, he is not a witness of the actual incident, as he had started running towards village Dhariwal on being chased by Amar Singh and Rattan Singh, sons of Isher Das, and hid himself in the bushes. He then waited for a short while in the bushes out of fear and then went to his house. His mother P.W. 5 told him that his brother Piara Singh had been murdered in the house of Bachan Singh, and that he should run away from home. Thus, out of the three witnesses, the only witness who gave evidence about the beating of the Piara Singh deceased by the appellants and the other accused is P.W. 5 Smt. Veero. Her evidence, as already noticed, is contrary to the medical evidence.**
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> **11. We may further examine the evidence of P.W. 5 as to the place where Piara Singh was alleged to have been killed. In her examination-in-chief she stated that all the accused took Piara Singh deceased to the courtyard of the house of Bachan Singh where he was beaten by Amar Singh, the appellant No. 1, with Thappi. Thereafter Piara Singh was dragged inside the room of the house of Bachan Singh by the accused persons. In her cross-examination she said**

> **that after killing Piara Singh on the spot, the accused took him inside the room of the house. The evidence, however, is that blood was recovered from the room and no blood was found on the courtyard. Her evidence is, therefore, inconsistent as to the place where Piara Singh was killed by the accused. In this connection, it may be pointed out that although according to the evidence of P.W. 4 Murta Singh, that when he came home he found his mother weeping and she told him that the accused had killed Piara Singh. In the First Information Report lodged by P.W. 4, there is no mention of the statement of his mother that Piara Singh was killed by the accused."**

In **Ashim Das and etc. etc. v. State of Assam** bearing case No.**Crl. A. Nos.109 with 113 and 119 of 1978** dated 02.05.1986 reported in **1987 CRI. L. J. 1533** wherein Hon'ble the Apex Court in para Nos.7 and 11 observed as under:

> **"7. Dr. Hawque P. W. 7 who conducted the autopsy, found five injuries namely; one abrasion, two lacerated wounds and two ecchymosis. According to him the death was due to shock and intra-cranial haemorrhage as a result of injuries sustained. In cross-examination he has stated that this intracranial haemorrhage was due to injury No. 4 i.e. ecchymosis over the left side of the forehead, 3" × 2".**
> **11. In Ram Narain, AIR 1975 SC 1727: (1975 Cri LJ 1500) it was held that if the evidence of the witnesses for the prosecution is totally inconsistent with medical evidence, this is a most fundamental defect in the prosecution case and unless reasonably explained it is sufficient to discredit the entire case. In Purshottam, AIR 1980 SC 1873: (1980 Cri LJ 1298) it was held that if there is a contradiction between medical testimony and alleged eye-witness regarding fatal injury, medical testimony is to be preferred. In Maula Bux (1983) 1 SCC 379 it was held that if there is a discrepancy between the post mortem report and the inquest report and if the post mortem and the testimony of the Doctor who conducted the post mortem if otherwise reliable the benefit of discrepancy must be given to the accused by accepting the post mortem report, if it is more favourable to the accused."**

In **Gurmej Singh and others v. State of Punjab** bearing case No.**Crl. A. No.778 of 1979** dated 16.07.1991 reported in **1992 CRI. L. J. 293** wherein Hon'ble the Apex Court in para No.8 observed as under:

> **"8. Counsel for the appellants next submitted that according to the prosecution appellant Gian Singh was armed with a Gandasi and he is alleged to have given a blow therewith on the chest of the deceased.**

Ordinarily a Gandasi blow would cause an incised wound whereas the deceased had an abrasion 5" x 1" on the chest caused by a hard and blunt substance. According to counsel normally when a witness deposes to the use of a particular weapon there is no warrant for supposing that the blunt side of the weapon was used by the assailant. In support of this contention counsel invited our attention to two decisions, namely, Hallu v. State of M.P. (1974) 4 SCC 300: (1974 Cri LJ 1385) and Nachhattar Singh v. State of Punjab (1976) 1 SCC 750: (1976 Cri LJ 691). In his submission, therefore, the injury found on the chest could not be attributed to Gian Singh who is stated to have used the Gandasi. We see no merit in this contention for the simple reason that the prosecution witnesses have categorically stated that Gian Singh used the blunt side of the Gandasi. If the prosecution witnesses were silent in this behalf the submission of counsel would have carried weight. But where the prosecution witnesses categorically state that the blunt side of the weapon was used there is no room for believing that the sharp side of the weapon which would be normally used had in fact been used. The observations in the aforesaid two judgments do not lay down to the contrary. In fact in the first mentioned case it is clearly stated that if the prosecution witnesses have clarified the position, their evidence would prevail and not the normal inference. Counsel, however, made a grievance that the prosecution had not tried to elicit the opinion of P.W. 1 Dr. Malhotra on the question whether such an abrasion was possible by a Gandasi blow. According to him, as held by this Court in Kartarey v. State of U. P. (1976) 1 SCC 172: (1976 Cri LJ 13) and Ishwar Singh v. State of U. P. (1976) 4 SCC 355: (1976 Cri LJ 1883), it was the duty of the prosecution to elicit the opinion of the medical man in this behalf. P.W. 1 clearly stated in the course of his examination-in-chief that injuries Nos. 2, 3 and 4 were caused by a blunt weapon. It is true that he was not specifically asked if the chest injury could have been caused by the blunt side of the Gandasi. It cannot be gainsaid that the prosecution must endeavour to elicit the opinion of the medical man whether a particular injury is possible by the weapon with which it is alleged to have been caused by showing the weapon to the witness. In fact the Presiding Officer should himself have elicited the opinion. However, in this case it should not make much difference because the evidence of P.Ws. 2 and 3 is acceptable and is corroborated by the first information report as well as P.W. 4. If the medical witness had also so opined it would have lent further corroboration. But the omission to elicit his opinion cannot render the direct testimony of P.Ws. 2 and 3 doubtful or weak. We, therefore, do not see any merit in this submission. In fact if we turn to the cross-examination of P.W. 1 we find that the defence case was that these three injuries were caused by the rubbing of the body against a hard surface, a version which has to be stated to be rejected."

In **Miran Bux v. Liloo alias Shagir Ahmad and others** bearing case No.**Crl. A. Nos.410 with 411 of 1992**

dated 23.07.1993 reported in **AIR 1994 SC 1612** wherein Hon'ble the Apex Court in para No.3 observed as under:

> **"3. The prosecution case is that one Manzoor Ahmed gave a report to the police on 8th November, 1983 stating that while he and his cousin were working in his meat shop and when the deceased Nazruddin was sitting there at about 8 P.M. the accused armed with Iron rods and hockey-stick came there all of a sudden and questioned the deceased and attacked him with their respective weapons. On the basis of this report the police registered a crime under Sections 147, 148, 307 and 323 I.P.C. The investigation was commenced. Later in the night the deceased Nazaruddin died and an altered FIR was issued. The inquest was held over the dead body and the Doctor, who conducted the post-mortem, found 18 external injuries and one of them was in the head resulting in a fracture. The Doctor opined that the deceased died as a result of intra-cranial haemorrhage. The prosecution relied on the evidence of the eye-witnesses P.Ws 1, 6 and 20. P.W. 1 is the main witness. He deposed that there was dispute regarding some money between Lallu, A-1 and the deceased and there was a fight between them and on the day of occurrence all the accused came in a body and attacked the deceased. This witness was cross-examined at length. The High Court has examined the evidence of this witness in great detail and pointed out several contradictions and discrepancies. If the evidence of P. W. 1 had to be believed there must have been blood on the stones nearby but no blood was found either in the shop or near the shop or on the stones covering the nallah. The High Court pointed out that no explanation has been put forward. All the other eye-witnesses stated to the same effect namely that the deceased was attacked inside the shop but strangely no blood was found. Likewise is the evidence of other eye-witnesses P.W. 2 Noor Mohmmad. P.Ws. 6, 8, 20 and 21 and the same has been considered in detail by the High Court. As rightly observed by the High Court all of them gave the same version in a parrot-like manner. The High Court having discussed their evidence in detail held that they came forward with a version which cannot be relied upon and they have suppressed the genesis of the incident. The High Court has also commented that the investigation was not conducted in a fair manner."**

In **Harchand Singh and another v. State of Haryana** bearing case No.**Crl. A. No.32 of 1970** dated 31.08.1973 reported in **AIR 1974 SC 344** wherein Hon'ble the Apex Court in para No.10 observed as under:

> **"10. The other eye witness, upon whose testimony reliance has been placed by the prosecution, is Ram Asra (PW 14). So far as this witness is concerned, we find that his presence at the scene of occurrence was**

> **not mentioned by Ajaib Singh deceased in the dying declaration which was recorded by ASI Harbhajan Singh at Khanna hospital. According to Ram Asra, he was working with the deceased at the well when the three accused came there and assaulted the deceased. If Ram Asra was, in fact, present and working with Ajaib Singh deceased at the time of the occurrence, it is not clear as to why the deceased should fail to mention that fact in the dying declaration. The evidence of Amarjit Singh, Mal Singh and Teja Singh upon which also the prosecution placed reliance goes to show that Ram Asra had not witnessed the occurrence. The name of Ram Asra was in the very nature of things not mentioned in the first information report, because the said report was based upon the dying declaration of Ajaib Singh. It would thus appear that the eye-witness upon whose testimony the prosecution wants to sustain the conviction of the appellants is shown to be an unreliable witness by the other evidence produced by the prosecution. The present is a case wherein one set of prosecution evidence condemns the other set of evidence produced by the prosecution. In the above state of affairs, we find it difficult to secure a firm ground upon which to base the conviction of the accused appellants."**

Referring the said citations, Learned Senior Counsel drawn the attention of the Court that the principles of the aforesaid citations can be applied in this case.

25. On the other hand, Learned P.P. representing the State-respondent relied upon one citation of Hon'ble Supreme Court of India in connection with case No. **Crl. A. No.1587 of 2008 (Birbal Nath v. State of Rajasthan & Ors.)** dated 30.10.2023 reported in **2023 SCC OnLine SC 1396** wherein para Nos.20, 21, 22, 23 and 28, Hon'ble the Apex Court observed as under:

> **"20. No doubt statement given before police during investigation under Section 161 are "previous statements" under Section 145 of the Evidence Act and therefore can be used to cross-examine a witness. But this is only for a limited purpose, to "contradict" such a witness. Even if the defence is successful in contradicting a witness, it would not always mean that the contradiction in her two statements would result in totally discrediting this witness. It is here that we feel that the learned judges of the High Court have gone wrong.**
>
> **21. The contractions in the two statements may or may not be sufficient to discredit a witness. Section 145 read with Section 155 of the Evidence Act, have to be carefully applied in a given case. One cannot**

lose sight of the fact that PW-2 Rami is an injured eye witness, and being the wife of the deceased her presence in their agricultural field on the fateful day is natural. Her statement in her examination in chief gives detail of the incident and the precise role assigned to each of the assailants. This witness was put to a lengthy cross examination by the defence. Some discrepancies invariably occur in such cases when we take into account the fact that this witness is a woman who resides in a village and is the wife of a farmer who tills his land and raises crops by his own hands. In other word, they are not big farmers. The rural setting, the degree of articulation of such a witness in a Court of Law are relevant considerations while evaluating the credibility of such a witness. Moreover, the lengthy cross examination of a witness may invariably result in contradictions. But these contradictions are not always sufficient to discredit a witness. In Rammi v. State of M.P. (1999) 8 SCC 649, this Court had held as under:

> **"24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny."**

22. In the same case, how far a contradiction in the two statements can be used to discredit a witness has also been discussed.

> **"25. It is a common practice in trial courts to make out contradictions form the previous statement of a witness for confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the section is extracted below:**
>
> > **"155. Impeaching credit of witness.- The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the court, by the party who calls him –**
> >
> > **(1)-(2)*****
> >
> > **(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;""**

> **"26. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be "contradicted" would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former statement of the witness, but it cautions that if it is intended to "contradict" the witness the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of the Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only limited purpose i.e. to "contradict" the witness."**
>
> **23. In Tahsildar Singh v. State of U.P., AIR 1959 SC 1012, it was held that to contradict a witness would mean to "discredit" a witness. Therefore, unless and until the former statement of this witness is capable of "discrediting" a witness, it would have little relevance. A mere variation in the two statements would not be enough to discredit a witness. This has been followed consistently by this Court in its later judgment, including Rammi(supra). Moreover, in this case the High Court lost sight of other more relevant factors such as the witness being an injured eye witness.**
>
> **28. The High Court has gone wrong in its appreciation of the case, both on facts as well as on law. The statement of an injured eye-witness is an important piece of evidence which cannot be easily discarded by a Court. Minor discrepancies do not matter. In State of M.P. vs. Mansingh and Others (2003) 10 SCC 414 where conviction of the accused by the trial court, inter alia, under Section 302, was set aside by the High Court on the so called discrepancies of an injured witness this court while allowing the State's appeal against the acquittal said this:**
>
> > **"9. The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. Merely because there was no mention of a knife in the first information report, that does not wash away the effect of the evidence tendered by the injured witnesses PWs 4 and 7. Minor discrepancies do not corrode the credibility of an otherwise acceptable evidence. The circumstances highlighted by the High Court to attach vulnerability to the evidence of the injured witnesses are clearly inconsequential.""**

Relying upon the said citation, Learned P.P. drawn the attention of the Court that for the minor contradictions, there is no scope to disbelieve the entire prosecution story and Learned

Trial Court below considering the materials on record rightly and reasonably found the appellant to be guilty.

26. In this case, the charge-sheet was submitted under Section 307 of IPC against the appellant and the Learned Trial Court below also framed charge against the appellant under Section 307 of IPC but before the Learned Trial Court, prosecution could not place any materials to sustain the charge against the appellant under Section 307 of IPC but the Learned Court below considering the materials on record found the appellant to be guilty under Section 323 of IPC and convicted him accordingly.

27. But here in the given case, from the evidence on record it appears that in the given case, the evidence of prosecution suffers from various infirmities as discussed above and furthermore from the evidences of victim and his parents, it appears that their evidences are suffering from full of improvements which they made for the first time in Court because the victim and his parents although in their examination-in-chief tried to support the version of each other but during cross-examination, it appears that they have deviated from their statements recorded by IO during investigation. Prosecution in course of hearing of argument has failed to explain those lacunas to sustain the judgment against the appellant and for such contradiction, it appears to this Court that the Learned Trial Court below at the time of delivery of judgment misinterpreted or misappreciated the evidence on record

properly for which in the considered view of this Court the present appellant deserves to be acquitted on benefit of doubt for want of corroborating evidence on record as such the appellant is liable to be acquitted on benefit of doubt. Furthermore, the citations as referred by Learned P.P. representing the prosecution is although very much relevant but the principle of said citation cannot be applied in this case for want of convincing evidence on record.

28. In the result, the appeal filed by the appellant is hereby allowed. The Judgment and order of conviction and sentence dated 04.01.2024 delivered by Learned Sessions Judge, North Tripura, Dharmanagar in connection with case No.S.T.(T-1) No.22 of 2019 is hereby set aside. The appellant namely Subrata Nath is hereby acquitted on benefit of doubt and he is set at liberty. His sureties, if any also stands discharged from the liability of bond. The case is thus disposed of on contest.

Send down the LCR along with a copy of this judgment.

Pending applications(s), if any, also stands disposed of.

JUDGE