

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. A(J) No.09 of 2025

Sri Chandrajoy Tripura,

S/O Lt. Satindra Tripura, R/O Mohini Para, Ratan Nagar, P.S. Raishyabari,
Dist. Dhalai, Tripura.

..... Appellant(s)

V E R S U S

The State of Tripura,

Represented by its Secretary Cum Commissioner, Department of Home,
Government of Tripura, P.O. Kunjaban, P.S. New Capital Complex, Dist West
Tripura.

..... Respondent(s)

For Appellant(s) : Mr. Dibyendu Sarkar, Legal Aid Counsel.

For Respondent(s) : Mr. Raju Datta, P.P.
Mr. Rajib Saha, Addl. P.P.

Date of hearing : *10th February, 2026.*

Date of Judgment : *10th March, 2026.*

Whether fit for reporting :

YES	NO
√	

**HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

JUDGMENT & ORDER

[S. Datta Purkayastha, J]

This appeal is preferred challenging the judgment dated 09.05.2024 passed by learned Sessions Judge, Dhalai, Ambassa in case No. ST (Type-I) 05 of 2023 whereby the appellant was convicted under Section 302 IPC and he was sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.20,000/- (rupees twenty thousand).

[2] The written ejahar was lodged by maternal grandfather of the deceased, Kafijoy Tripura, a boy aged about seven years, on 01.11.2022 at around 7 pm. to the effect that the appellant on that day at around 04.30 pm had

killed the deceased with a dao and left the dead body in a paddy field. Hearing the information, the informant immediately went there and found the dead body of his grandson was lying there with cut injury on his throat. Police of Raishyabari police station was informed and on their arrival, the FIR was lodged.

[3] Police started investigation forthwith and formally arrested the appellant on 05.11.2022 as immediately after the incident, the appellant was manhandled by agitated people of that locality and on rescue by the TSR personnel he was shifted to Gandacherra Sub-Divisional hospital. On his release from the said hospital, he was thereafter arrested. Police on completion of the investigation, laid the charge-sheet against him under Section 302 IPC.

[4] Learned Sessions Judge framed the charge against him under Section 302 IPC for commission of murder of deceased Kafijoy Tripura on 01.11.2022 to which he denied the allegation.

[5] Prosecution thereafter examined total 24 (twenty four) witnesses to prove the charge, out of whom Gathanjoy Tripura [PW-4], Smti Harisree Tripura [PW-5] and Hemanta Tripura [PW-11] are the star witnesses of the case. Apart from them, Biswarani Tripura [PW-3], Kiranda Tripura [PW-9] (a co-villager), Gunadhar Tripura [PW-10] (the informant of the case), Jitendra Kumar Sharma [PW-12] (a TSR personnel), Albert Reang [PW-13] (a Scientific Officer who visited the site after the incident), Dr. Binoy Kumar Debbarma [PW-15], Dr. Subhankar Nath [PW-16], Smt. Rupali Majumder

[PW-19], Jatanjoy Tripura [PW-20] and Md. Jakir Hossain [PW-22] are also important witnesses whose evidence requires discussions.

[6] Before adverting to the submissions made by the learned counsel of both sides, a snapshot of the evidences of above said witnesses are given a glimpse first.

[7] Gathanjoy Tripura [PW-4], a boy of 15 years and a co-villager of the deceased stated that on that fateful day, he along with Kabita Tripura (not examined in this case) were searching crickets on the road side of Ashwini Kumar Para and the deceased was also standing beside the road. The appellant suddenly appeared there and snatched away dao from the hand of said PW-4 and attacked the deceased. The deceased was then dragged inside the paddy land and was murdered by the appellant cutting his neck with said dao. Subsequently, the police recovered the said dao in their presence. He also identified the said dao in the Court.

[8] In his cross-examination, PW-4, however, admitted that he did not state to the Magistrate that the appellant had snatched away said dao from his possession and attacked the deceased and then dragged him in the paddy land and killed him by cutting his neck. Therefore, as it appears, vital portion of his evidence was missing in his previous statement recorded under Section 164(5) Cr.P.C. Our notice is brought to his said previous statement by Ld. Counsel of the appellant where he stated that when he was searching for grasshopper suddenly he heard crying of somebody but could not see who was crying as

same was coming from a distance and it was dark. However, the appellant seeing him chased him and he fled away with his mother.

[9] Smt. Harisree Tripura [PW-5], grandmother by relation of the deceased, was declared hostile by the prosecution as she did not support the prosecution case. Some portion of her previous statement recorded under Section 161 Cr.P.C. was confronted to her by the prosecution and she admitted that she had stated to the police that she had seen the appellant to kill the deceased, Kafijoy Tripura with a takkal. She also admitted that the appellant had snatched away the takkal from the possession of Gathanjoy Tripura [PW-4]. She also stated to the police that thereafter the appellant taking the body of the deceased on his shoulder, threw it on the road and fled away and then Hemanta Tripura [PW-11] and Gathanjoy Tripura [PW-4] rushed to the spot on hearing her outcry.

[10] In her cross-examination by the defence, PW-5 stated that the distance between the paddy land and the jungle in which she went to collect her cows was one kilometer and she went inside the jungle keeping Kafijoy Tripura beside the paddy field. She was re-examined and she admitted that she had given statement to the Magistrate under Section 164(5) of Cr.P.C. but in her cross-examination, she stated that she did not disclose the name of the assailant to the Magistrate as to who chopped the victim and that the appellant Chandrajoy Tripura did not snatch away the takkal from the possession of Gathanjoy Tripura. She also admitted that she had not stated to the Magistrate that the appellant taking the body of the victim on his shoulder left the same to the nearby road. In fact, she also gave similar statement to the Magistrate that

she had heard cry of somebody but could not see as to who was crying due to distance of that place from the place where she was, but when the appellant saw her, he chased her.

[11] Next important witness is Hemanta Tripura [PW-11] who deposed that on 01.11.2022 at about 04.00/04.30 pm when he was returning to his house at Ashwini Rowaja Para, the appellant at a distance of 100 meters from his house asked him to give him a lift by his motorcycle to his (appellant's) house but he did not agree as his (PW-11) house was very closer to said place. He also found Harisree Tripura [PW-5] to have gone ahead of the children namely, Gathanjoy Tripura [PW-4], Kabita Tripura (not examined) and Kafijoy Tripura (deceased) maintaining a little distance to bring water from river Raima and those children were waiting beside the road for her. While he was entering into the house of one Gunadhar Tripura to hand over the motorcycle to one Nagenjoy Tripura, he heard shouting coming from outside and hurriedly came out therefrom after handing over the motorcycle and noticed that Harisree Tripura and two children namely, Gathanjoy Tripura and Kabita Tripura were shouting and crying and that the appellant was carrying the dead body of the deceased on his shoulder and seeing that scene, the local people also started shouting. The appellant, thereafter, left the dead body on the road and fled away. The witness thereafter called Gunadhar Tripura, who is the grandfather of the deceased. Kafijoy Tripura was found lying dead and blood oozed out on the road and thereafter, he informed the matter to Raishyabari police station. He also wrote down the FIR as per desire of the informant, Gunadhar Tripura.

[12] In his cross-examination, PW-11 admitted that he did not state to the police that he found the appellant to carry the dead body on his shoulder and to leave the place noticing the shouting of local people and said Harisree Tripura and two children. Therefore, entire vital part of his evidence is found omitted in his previous statement.

[13] These are the evidences of the three key witnesses on which the entire prosecution case mainly rests on.

[14] Biswarani Tripura [PW-3] who is the mother of the deceased is not the eye witness of the occurrence. She stated that on the fateful day Master Hemanta Tripura came to her house and reported that the appellant had killed her son with a dao in a paddy field near their house. Meanwhile, at around 04.30 pm, hearing hue and cry, she and others rushed to road side of Ashwini Rowaja Para situated behind her house and found that her son was lying dead on the paddy field beside the road in pool of blood having cut injury on his neck. Thereafter, from Harisree Tripura, Gathanjoy Tripura and Hemanta Tripura, she learnt that the appellant had killed her son. A suggestion was given to her by the defence that at the time of incident, her son along with other boys and girls of his age were collecting crickets having takkal in their hands and thereafter, the deceased had some dispute with other boys and girls and therefore, he was attacked by those children on the spot.

[15] Kiranda Tripura [PW-9], a co-villager, stated that on 01.11.2022, in the evening at about 04.30 pm when he was going to take bath, at that time her mother informed him crying that the appellant had murdered the deceased

by cutting his throat and neck with a dao and fled away. Immediately, he went to the spot and found huge gathering of local people assembled there and the body of Kafijoy Tripura with deep neck cut injury was found lying on the road. The locals present there stated that the appellant had murdered the deceased and thereafter, he along with others went to the house of the appellant to detain him and noticed that the appellant was sleeping in his hut covered with a quilt but his wearing apparels i.e. jeans pant and a shirt were wet. Thereafter, they detained him and took him to the spot and then he was handed over to the police personnel present there. However, he was severely manhandled by the local people at that time who were annoyed with his said act. In his cross-examination, he stated that he did not state to the police officer that the name of the accused was Chandrajoy Tripura. Basically he is a hearsay witness.

[16] Gunadhar Tripura [PW-10], the maternal grandfather of the deceased who is also informant of the case stated that on that day at around 04.30 pm, the deceased went to bring some water from a lunga near their house intervened by a small tilla land, and there the appellant after snatching away a dao from Gathanjoy Tripura gave repeated blows on the neck of the deceased and killed him. When the local people started shouting and reached to the spot, the appellant fled away leaving the dead body on the road nearby the paddy field. According to him, he learnt the said incident from Hemanta Tripura and thereafter, he lodged the FIR. In his cross-examination, he further confirmed that after being informed by Hemanta Tripura, he went to the spot along with him and found the dead body on the paddy field. Similar suggestion was also

given to him that due to quarrel with other children, the deceased received said cut injury on his neck. He is also not the eye witness of the incident.

[17] Jatanjoy Tripura [PW-20], father of the deceased is also similarly not an eye witness of the occurrence. He stated that hearing the shouting of the villagers, he went to the spot and found the body of his son lying on the road with deep cut injury on the neck. According to him also, said Hemanta Tripura witnessed the occurrence and he learnt the said incident from Hemanta Tripura.

[18] Dr. Binoy Kumar Debbarma [PW-15] is a medical officer who did the autopsy on the dead body of the deceased. He stated that he found deep cut injury measuring about 8 cm x 5 cm upto vertebral body on the throat of the deceased and another chopped wound measuring about 3 cm x 1 cm x 0.5 cm over the right temporal region of the skull. According to him, cause of death was due to hemorrhagic shock for said cut injury in the throat which was homicidal in nature and time of death was 1800 hours to 2200 hours prior to the post mortem examination.

[19] Md. Jakir Hossain [PW-22], Sub-Inspector was the first investigating officer. He stated that he collected blood stain in gauze cloth from the place of occurrence and a dao commonly known as takkal therefrom. He identified said dao in the Court also. He visited the house of the appellant on 02.11.2022 and seized a portion of blanket having blood stain there. Said seizure list was marked as Exbt.P-2 and said part of blanket was marked as Exbt. MO-V. He also seized half pant and a t-shirt from the possession of the appellant. Said seizure of 'part of the blanket' was also corroborated by Albert

Reang [PW-13] who is a Scientific Officer appointed under Nirbhaya scheme for Dhalai District. PW-13 also visited the house of the appellant on that day along with the investigating officer. According to him, no blood stain was found in the wearing apparel of the appellant but same was noticed in the quilt used by the appellant.

[20] Rupali Majumder [PW-19], Scientific Officer-cum-Assistant Chemical Examiner attached with Biology/Serology Division of State Forensic Science Laboratory, Narsingarh stated in her evidence that she had examined said seized gauge cloth having blood stain collected from the place of occurrence, said dao and some pieces of cotton wool said to be the part of the blanket of the appellant and finally opined that human blood stain was detected in said gauge cloth and dao and small amount of human blood stain was also detected in the said pieces of cotton wool (part of the said blanket) but blood group of the same could not be determined due to paucity of the stain and as such she forwarded the same to DNA Typing Division for DNA profiling and matching.

[21] Dr. Subhankar Nath [PW-16], who is Deputy Director, DNA Typing Division of said Forensic Science Laboratory, in his evidence, stated that he had conducted DNA profiling through allelic distribution for the studied loci in different exhibits but for partial amplification, it was not possible to draw any opinion, however, the amplification of amelogenin, indicated the blood stain to be of human male origin and no allelic could be amplified from said woolen portion of the blanket except that said stain was of human male origin.

[22] Though there are evidences of many other witnesses in the record which are not described hereinabove being not much relevant for determination of points raised in this appeal, only the relevant portion of the evidences which are significant to consider the submissions of both sides and to arrive at a proper decision are reflected above for better understanding and appreciation.

[23] Mr. Dibyendu Sarkar, learned legal aid counsel after taking us through the evidences of the witnesses submits that learned Trial Court despite having serious deficiencies in the evidences has mis-appreciated the same leading to a wrong decision of convicting the appellant. Mr. Sarkar, learned counsel also submits that the material omissions and contradictions of the vital witnesses were illegally ignored by learned Court below. Learned legal aid counsel also challenges the authenticity of seizure of the part of the quilt from the house of the accused person on the ground that on the sealed packet of seized quilt, signature of the seizure witness was not obtained and moreover, signature of any family member of the appellant was also not taken in the seizure list. According to him, the eye witnesses did not support the prosecution version that they had witnessed the appellant to cause murder of the deceased. He also points out that in DNA profiling, the complicity of the appellant in the alleged crime was not established. Learned legal aid counsel further contends that motive of the crime was also not established in this case. Another issue was also raised by him that though the weapon of offence i.e. the dao was seized by the police but the investigating officer did not make any attempt to collect any expert opinion about the fingerprints, if any, available on said dao. Learned counsel, Mr. Sarkar further submits that one of the vital witness namely, Kabita

Tripura was also stated to be present with the deceased at the time of alleged occurrence but she has been withhold by the prosecution without any explanation. Mr. Sarkar, learned counsel, therefore, earnestly prays for acquittal of the appellant.

[24] Mr. Raju Datta, learned P.P., however, submits that the evidences of Gathanjoy Tripura [PW-4], Harisree Tripura [PW-5] and Hemanta Tripura [PW-11] were consistent and each of them corroborated with each other; moreover, the medical evidence i.e. post mortem report also supported the allegation of homicidal death of the deceased. Learned P.P. further submits that the informant or any other family member of the deceased had no enmity to falsely implicate the appellant in this case and therefore, there is no reason to disbelieve the prosecution witnesses. According to learned P.P., the judgment passed by learned Sessions Judge was just and proper which requires no interference.

[25] Taking into consideration the submission of both sides and the materials placed through evidence by the prosecution, we are in agreement with Ld. P.P. that the prosecution could successfully be able to prove that the death of the deceased was homicidal in nature and it occurred due to said cut injury found in the throat of the deceased. Certainly, the conscience of the Court is shocked for the reason that an innocent boy of seven years old was murdered brutally. However, on careful examination of the evidences as brought forward by the prosecution, some odds and deficiencies are also noticed which are further highlighted hereunder:

(i) Gathanjoy Tripura [PW-4], though stated in his examination-in-chief that in his presence the appellant had appeared at the scene of crime and snatched away dao from him and thereafter killed the deceased but, in his cross-examination, it reveals that the entire story of snatching away of said dao from his hand and killing the deceased with the same were found omitted in his previous statement recorded under Section 164(5) of Cr.P.C. by the Magistrate. Such statement was recorded by the Magistrate on 04.11.2022 i.e. just three days after the occurrence when everything was fresh in his memory at that time. Such material omissions shake his credibility as a witness.

(ii) Mother of PW-4, Harisree Tripura [PW-5] who is also the grandmother of the deceased by relation as claimed by her, was declared hostile by the prosecution as she did not support the prosecution version. Though during her examining by the learned Prosecutor, she had admitted that she had stated to the police that she had seen the appellant Chandrajoy Tripura chopping the deceased with a takkal after snatching the same from Gathanjoy and thereafter, throwing the body on the road, but, during her cross-examination by the defence side, she admitted that she did not state to the Magistrate that the appellant had chopped the deceased with a takkal by taking it from Gathanjoy Tripura and thereafter threw the dead body on the road. Therefore, except what was recorded by the investigating officer under section 161, Cr.P.C., she neither supported the prosecution story in the Court nor she stated any such fact before the learned Magistrate while recording her statement under section 164, Cr.P.C.

(iii) According to Gathanjoy Tripura [PW-4], one Kabita Tripura was also there with him searching the crickets when the incident had occurred, but said Kabita Tripura was withheld by the prosecution without offering any explanation therefor.

(iv) Hemanta Tripura [PW-11] stated that on the relevant date and time, when he entered into the house of Nagenjoy Tripura to handover the motorcycle, he heard shouting from outside and immediately after handing over the motorcycle he came out from that house and found that Harisree Tripura [PW-5] and two other children namely, Gathanjoy Tripura and Kabita Tripura were shouting and crying. According to him, he also noticed that the appellant was carrying the dead body of the deceased on his shoulder. Local people were also shouting seeing the same and then the appellant left the place. But, as revealed from his cross-examination, he did not state in his statement made before the police officer, that he had found the appellant to carry the dead body of the deceased on his shoulder and to leave it thereafter seeing the village people. Therefore, his most vital part of evidence is also found missing in his previous statement. No other villager examined in this case has claimed that they had seen the occurrence or seen the appellant to carry the dead body of the deceased.

(v) Though, according to Albert Reang [PW-13], on 02.11.2022, the investigating officer collected blood sample of the deceased from the growing paddy and also from the road and he also seized a part of one quilt of the appellant wherein some blood stains were found, but Lalit Mohan Tripura [PW-1] and Gane Chand Tripura [PW-2] who were the seizure witnesses of

said articles, did not support the fact of said seizure and they were declared hostile by the prosecution. However, they admitted that they had stated to the investigating officer about seizure portion of said quilt by the investigating officer. Even if, the seizure of said articles are believed, still it is simultaneously the fact that Dr. Subhankar Nath [PW-16], during DNA profiling of said blood stains could not ascertain whether said blood stain found in the quilt of the appellant was of the deceased. Therefore, such missing link also failed to connect the appellant with the alleged crime.

(vi) Rupali Majumder [PW-19], Scientific Officer-cum-Assistant Chemical Examiner who examined the blood stain found in the said portion of the said blanket of the appellant also could not ascertain the blood group of the same due to insufficiency of quantity, to come to the finding that said stain was of the blood of the deceased. She also did not find any blood stain in the seized wearing apparels of the appellant.

(vii) The investigating officer also did not make any attempt to enquire about any fingerprints, if any, available in said dao to connect the appellant with the alleged crime.

(viii) Therefore, there is no satisfactory evidence in the record to hold the appellant beyond reasonable doubt guilty of committing the alleged offence. Suspicion however be so strong cannot take the place of formal proof of complicity of the accused. Clear and unimpeachable evidence is required to hold a person guilty of committing any offence. (Ref.- *Anil Shamrao Sute and another vs. State of Maharashtra, 2013 AIR SCW 2179*).

[26] In view of above, we are of the opinion that learned Trial Court ought to have extended the benefit of doubt to the appellant.

[27] Though learned Trial Court has relied on several precedents in support of his observation that in a case of circumstantial evidences, every incriminating circumstance must be clearly established by reliable and clinching evidence which would lead to only irresistible conclusion about the guilt of the accused, but while applying the same, has mis-appreciated the entire evidence. No discussion has been made by him in respect of the above indicated deficiencies and flaws in the prosecution case.

[28] In view of above, the impugned judgment of conviction and sentence dated 09.05.2024 passed by learned Sessions Judge, Dhalai, Ambassa in case No. Sessions Triable (Type-I) 05 of 2023 are set aside.

Accused is acquitted on benefit of doubt from the charge framed against him and he is set at liberty.

Issue release warrant at once.

Reconsign the Trial Court record with copy of the judgment.

S. Datta Purkayastha, J.

Dr. T. Amarnath Goud, J.