

**HIGH COURT OF TRIPURA
AGARTALA**

CRL.A 12 OF 2018

Sri Kripesh Sabdakar,
S/o Lt. Bhupendra Sabdakar, resident of
Radhanagar, P.O. Kumarghat,
District-Unakoti, Tripura.

----Appellant

Versus

1. The State of Tripura.

2. Dipankar Sabdakar,
S/o Lt. Dharendra Sabdakar, resident of
Radhanagar, P.O. Kumarghat,
District-Unakoti Tripura.

3. Subhankar Sabdakar,
S/o Lt. Dharendra Sabdakar, resident of
Radhanagar, P.O. Kumarghat,
District-Unakoti Tripura.

4. Bhanu Sabdakar,
S/o Lt. Dharendra Sabdakar, resident of
Radhanagar, P.O. Kumarghat,
District-Unakoti Tripura.

सत्यमेव जयते

----Respondents.

For the Appellants : Mr. P. Roy Barman, Sr. Advocate
Mr. S. Bhattacharjee, Advocate.

For the State-Respondent: Mr. R. Datta, Public Prosecutor

For Accused-Respondents: Mr. H.K.Bhowmik, Advocate.

Argument heard on : 24.02.2021

Judgment & Order delivered on : **07.04.2021**

Whether fit for reporting : Yes

BEFORE
HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR.JUSTICE ARINDAM LODH

Judgment & Order

(Arindam Lodh, J)

This appeal under Section 378(4) of the Criminal Procedure Code (for short, CrPC) read with Section 372 of CrPC filed by the complainant arises out of the judgment and order of acquittal dated 18.04.2018, passed by the learned Sessions Judge, Unakoti Judicial District, Kailashahar in case No.ST 21(U/K) of 2015 under Sections 447/323/302/34 of the Indian Penal Code.

2. The facts leading to the present appeal in a nutshell are as under:

The complainant Sri Kripesh Sabdakar lodged a written complaint on 04.01.2015 to the Officer-in-Charge, Fatikroy Police Station, inter alia, stating that on 02.01.2015 at about 7:30 am, Dipankar Sabdakar, Bhanu Sabdakar, Subhankar Sabdakar and Dhirendra Sabdakar entered into his house with 'lathi' (stick) and started assaulting his nephew Litan Sabdakar. Litan being sustained injuries on his head fell down with bleeding from his mouth and nose. The accused-respondents also had beaten Amrit Sabdakar. Neighbouring people came and shifted Litan to

Fatikroy Hospital, wherefrom he was referred to RGM Hospital, Kailashahar wherefrom he was referred to GBP Hospital, Agartala. Delay in filing the FIR was caused due to being busy in connection with the treatment of the victim, Litan Sabdakar.

2.1 Kumarghat PS Case No. 01/2015 under Sections 447/325/34 of IPC was registered on receipt of the complaint. Investigation was commenced and during investigation Litan Sabdakar succumbed to his injuries. On completion of investigation, the IO submitted charge-sheet under Sections 447/323/302/34 of IPC against the accused-respondent Nos. 2, 3 and 4 herein.

3. Being committed, the learned Sessions Judge framed charge against the respondent Nos. 2, 3 and 4, under Sections 447/302/323 read with Section 34 of IPC.

4. In course of trial, the prosecution had examined as many as 16 witnesses to substantiate the charge. All the accused persons have pleaded their innocence and claimed trial.

5. During trial, one of the accused persons namely Dharendra Sabdakar died. The respondent Nos. 2, 3 and 4 herein, are the original accused persons (here-in-after referred to as accused persons).

6. At the closure of recording evidence, the accused persons were examined under Section 313 CrPC with reference to the incriminating materials, elicited from the ocular testimony as well as documentary evidence on record to which they denied the evidence as recorded against them and claimed to be innocent. However, they declined to adduce evidence on their behalf.

7. Learned Sessions Judge having heard the learned counsels and on appreciation of the ocular and documentary evidence on record has acquitted all the accused from the charges on benefit of doubt with the following observation:

(i) All the prosecution witnesses being related to the deceased on cautious appreciation of their evidence, they were found to be unreliable and untrustworthy. The extent of improved and exaggerated versions was found to be unwarranted;

(ii) PW-3, Sujit Sabdakar is an independent witness who came to know about the alleged involvement of the accused persons with crime from two other independent witnesses Ketaki Sabdakar and Phani Sabdakar, but, prosecution did not produce and examine them as witnesses which caused a serious doubt in the mind of the learned Sessions Judge;

(iii) *Serious discrepancies in the statements of the related witnesses in respect of the fact that many of them sustained serious grievous injuries and were treated in the hospital. But the prosecution failed to produce any materials to substantiate their injuries in the incident;*

(iv) *The 'lathi' i.e. the weapon of offence was seized by the police but no blood stain was found in the said 'lathi', which, according to the learned Sessions Judge, further suggested a suspicious circumstance regarding accused persons' participation in the crime. He received support from the deposition of PW-11. PW-15, Dr. Pranab Chowdhury, who in his cross-examination stated that there would have been possibility of presence of blood stain on the weapon of offence, i.e. 'lathi' in case of bleeding injury. But no blood stain was found in the stick (lathi);*

(v) *The weapon of offence i.e. three branches of tree were recovered from the house of Amrit Sabdakar (PW-6) after three days which is a doubtful circumstance;*

(vi) *Police personnel visited the place of occurrence on the same date but none of the witnesses who are closely related with the deceased did not disclose the names of the assailants.*

8. Before considering the present appeal on merits, the law on the appeal against acquittal and the scope and ambit of Section 378 of CrPC and the interference by this Court in an appeal against acquittal is required to be considered.

9. The Apex Court in the case of **Chandrappa & Ors. Vrs. The State of Karnataka, (2007) 4 SCC 415** after taking into consideration its earlier decisions laid down the following principles (SCC P.432, Para 42).

“42.From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and law.

(3) Various expression such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc, are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to

him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusion are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal recorded by the Trial Court.”

9.2 In ***Ghurey Lal v. State of U.P., (2008) 10 SCC 450***, the Apex court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court’s acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

9.3 However, the findings of fact arrived at by a court can be held to be perverse if the findings have been recorded by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is “against the weight of evidence”, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. [*Vide Rajinder Kumar Kindra v. Delhi Admn, (1984) 4 SCC 635, Excise and Taxation Officer-cum-Assessing*

Authority v. Gopi Nath & Sons, 1992 Supp (2) SCC 312, Triveni Rubber & Plastics v. CCE, 1994 Supp (3) SCC 665, Gaya Din v. Hanuman Prasad, (2001) 1 SCC 501, Aruvelu v. State,(2009) 10 SCC 206 and Gamini Bala Koteswara Rao v. State of A.P.,(2009) 10 SCC 636].”

(emphasis supplied)

9.4 It is further observed by the Apex Court in ***Kuldeep Singh v. Commissioner of Police (1999) 2 SCC 10*** that *if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with.*

10. On cumulative reading of the aforesaid decisions, we are of the opinion that duty cast upon us being first appellate court to re-appreciate the entire evidence on record together with the reasoning given by the learned trial court. As an appellate court dealing with the appeal against acquittal passed by the trial court, it is required to bear in mind that in case of acquittal there is double presumption in favour of the accused. *Firstly*, the presumption of innocence is established under fundamental principle of criminal jurisprudence i.e. every person shall be presumed to

be innocent unless he is proved to be guilty by a competent court. *Secondly*, with the acquittal of an accused of crime, the presumption of his innocence is further reinforced, re-affirmed and strengthened by the trial court. In view of this established rule, in an appeal against acquittal, the High Court shall start hearing with a different mindset that it has certain limitations in considering the evidence and materials on record as relied upon by the learned trial Judge.

10.1 Further, unless the view taken by the trial court is not a possible view, normally the High Court should not interfere with the acquittal. There cannot be any straightjacket formula. Whether the view taken by the trial court is a possible view or not; whether the findings returned by the trial court are in consonance with the evidence or not; are all such matters which depend upon facts and evidence on record of each individual case.

10.2 It there is some evidence which is acceptable and could be relied upon, the conclusion of the trial court would not be treated as perverse.

10.3 However, it is made clear that there will be no such restriction for this court for hearing an appeal against conviction and sentence passed

by the trial court when it shall have the full power to appreciate the evidence afresh to come to its own finding independently.

11. Mr. P. Roy Barman, learned Sr. counsel appearing for the complainant contended that the learned Sessions Judge ought to have believed the versions of the prosecution witnesses irrespective of the fact that they were related to the deceased. According to learned Sr. counsel, the related witnesses were found to be eye witnesses to the crime being sustained injuries to their persons out of the attack by the accused persons.

12. Mr. Roy Barman, learned Sr. counsel, further argued that the discrepancies as surfaced in the statements of the prosecution witnesses were minor in nature and should be discarded by the court. It was further deliberated that there was imminent clear common intention on the part of the accused persons to kill the deceased.

13. On the other hand, Mr. H.K. Bhowmik, learned counsel appearing for the accused persons defending the judgment of acquittal passed by the learned Sessions Judge, at the outset, drew our attention to the circumstance that the prosecution failed to prove the actual place of occurrence of the alleged crime. The scene of crime, according to learned counsel for the accused persons had been shifted from the versions of the prosecution witnesses since some witnesses stated that the incident had

occurred in the courtyard and some of the witnesses stated that the said incident took place in the verandah and some were found to be very categorical that the incident had occurred inside a room. He further would contend that prosecution failed to prove that any of the related witnesses sustained injuries on their persons, but, without any evidence. No injury reports were produced before the court to substantiate this plea of the prosecution. Important witnesses were withheld, as contended by learned counsel for the appellant.

14. Keeping in view the aforesaid rival submissions, let us examine the evidence on record as put forth by the prosecution.

15. PW-1, Niva Sabdakar deposed that while she was in her house on the day of the incident, she heard hue and cry at about 7:30 am in the house of Amrit Sabdakar (PW-6). She rushed there and found that Litan Sabdakar was lying injured in their courtyard being assaulted. Usha Sabdakar (PW-13) informed her that Litan was assaulted by the accused persons.

During cross-examination, she stated that she was cousin sister of victim Litan Sabdakar. She stated to the IO that Usha Sabdakar (PW-13) told her that accused persons along with one Munna Sabdakar assaulted

Litan. She further stated that reaching the house of the victim she did not find the accused persons.

16. PW-2, Gopal Sabdakar was the witness to the seizure of 'lathi'. The seizure list was prepared in presence of him. He put his signature (Exbt.1).

17. PW-3, Sujit Sabdakar deposed that after hearing hue and cry he rushed to the house of Amrit Sabdakar and found Litan Sabdakar was being lifted in the vehicle in injured condition as he was assaulted. Ketaki Sabdakar and Phani Sabdakar told him that Subhankar Sabdakar, Dipankar Sabdakar along with Munna Sabdakar assaulted Litan Sabdakar.

Being confronted with the cross-examination, PW-3 stated that he did not state to darogababu that Ketaki Sabdakar and Phani Sabdakar told him that the said accused persons assaulted Litan. He further stated that he was the cousin sister of Litan.

18. PW-4, Nripendra Sabdakar deposed that on 02.01.2015 at about 7:30 am suddenly the accused persons along with Dharendra Sabdakar entered into their house and attacked him with 'lathi' which he resisted by his hand and as a result he received injury in his hand. Then they pushed him down and attacked his son Litan Sabdakar and assaulted

him with 'lathi' in his head causing severe bleeding injury and as Litan fell down on the ground and neighbouring people came, the accused persons escaped away. Neighbouring people shifted his son to Fatikroy PHC wherefrom he was referred to Kailashahar Hospital and thereafter, he was referred to GBP Hospital, Agartala.

Being confronted with cross-examination, PW-4 stated that there was a house of Brajendra Sabdakar between his house and Amrit Sabdakar. There was no vacant place in between. He further stated that Litan was residing in a separate mess in his same house complex. PW-4 further stated that he got treated for his hand injuries and submitted document to darogababu. In reply to a question made by the court, PW-4 stated that on the previous day of occurrence there was a quarrel over the quarrel between two children i.e. his grand child and the grand child of Dhirendra Sabdakar.

19. PW-5, Nripesh Sabdakar deposed that Litan Sabdakar was his brother. He put his signature on the inquest report (Exbt.2).

20. PW-6, Amrit Sabdakar deposed that Litan was his cousin brother and they reside in the same house but in separate huts. On 02.01.2015, at about 7:00 am in the morning while he was busy in his house Litan was washing his mouth in front of his hut, at that time, the

accused persons along with Dharendra Sabdakar entered into his house and started assaulting Litan on his head by a 'lathi' and he fell down on the ground. He came out from his room when Bhanu Sabdakar pressed his throat and he also fell down on the ground. The said respondents continued the assault on Litan. At that time, Litan's father came forward but the said respondents also attacked him. Thereafter they left the place. Many villagers came to the spot and Litan was shifted to hospital.

During cross-examination PW-6 stated that he did not furnish any papers relating to his treatment to the IO. He denied that he was not treated with the Doctor of the Hospital. He further stated that he did not state to police that he and Litan Sabdakar reside in the same house. PW-6 further stated that he stated to the police that on 02.01.2015 at about 7:30 am he was in his home and Litan Sabdakar of the nearby house came while brushing his teeth. He further stated that at the east of his house there was a road and at the west, the house of Brajendra Sabdakar was situated and that the house of the accused persons is situated at the south of their house. He denied the suggestion that he himself and Kripesh Sabdakar concocted the case and for that reason the informant i.e. Kripesh did not inform the police about the incident at the earliest opportunity. Rests were the suggestions put forth by the defence to him which he denied.

21. PW-7, Subhrendu Das was the scribe. He identified his signature in the written complaint (Exbt.3).

22. PW-8, Kripesh Sabdakar deposed that deceased Litan Sabdakar was his nephew. On 02.01.2015 while he was in his house at about 7:30 am after hearing hue and cry in the house of Amrit Sabdakar (PW-6), he rushed there and found the accused persons along with Dhirendra Sabdakar were assaulting Litan with a branch of a tree when he fell down on the ground and started bleeding from his nose and mouth. Dhirendra Sabdakar pressed his chest. He and Brajendra somehow were able to snatch away the said branch of tree from the hand of Dipankar Sabdakar, Subhankar Sabdakar and Dhirendra Sabdakar. Then, the son of Dhirendra Sabdakar namely, Bhanu Sabdakar came and pressed the throat of Amrit Sabdakar. At that time, the said respondents fled away from the place of occurrence. Litan was shifted to hospital.

Being confronted with cross-examination, PW-8 stated that they were three brothers namely, he himself, father of the deceased Nripendra Sabdakar, and another Jitendra. They lived in the same house where Litan was also used to stay. There was a common courtyard in his house and the house of Amrit Sabdakar. The adjacent house was of Dhirendra Sabdakar. There was also the house of Brajendra Sabdakar and

Nripendra Sabdakar, father of Litan Sabdakar. Litan and his father were residing in the same house. He accompanied Litan when he was taken to Fatikroy Hospital. There was a police outpost on the way to hospital, but, they did not report the incident to the police officials of that outpost. They told to Doctor that Litan was assaulted by the accused persons. PW-8 accompanied Litan to Kailashahar Hospital wherefrom he was shifted to GBP Hospital.

In cross-examination, PW-8 admitted that he did not make any statement that after hearing hue and cry he rushed to the place of occurrence and he and Brajendra somehow managed to snatch away the branch of tree from the hands of the accused persons. He further stated that many people arrived at the place of occurrence.

23. PW-9, Brajendra Sabdakar, one of the three brothers of PW-6 and 8. He deposed that on 02.01.2015 at about 7:30 pm while he was in his house and after hearing hue and cry in the house of Amrit Sabdakar, he rushed there and found Dhirendra Sabdakar and Dipankar Sabdakar assaulting Litan with a branch of tree. As a result Litan fell down on the ground and started bleeding through his mouth and nose. Dhirendra pressed the chest of Litan with his shoe on leg. Bhanu came and pressed the throat of Amrit Sabdakar, then, he and Kripesh snatched away that branch of tree

from the accused persons. Other villagers also rushed to the spot and accused persons fled away. PW-9 further deposed that the branches of tree were seized by the police, however, he could not remember whether the branches of tree produced before the court on the date of deposition were the seized branches.

23.1 During cross-examination, he stated that his house is two houses away from the house of Kripesh. There was courtyard in the house of Kripesh and Amrit. Litan and his father were residing in the same house which was their house earlier.

23.2 He further deposed that Litan and his father was not residing in which Kripesh was residing. PW-9 further stated that he found the incident on the verandah of the hut of Amrit Sabdakar. He went first to the place of occurrence and then Kripesh came. When he went to the place of occurrence, he did not find any villagers. He further stated that he did not inform the police about the incident and he was not questioned by police. Later on, he stated that after the incident he was always in his house. PW-9 further stated that police went to their house on the date of the incident. On that date in the afternoon, he went to the field to play and for that reason police could not meet with him. PW-9 further stated that he could not say exactly on which date the tree branches were seized by the IO. The

branches of tree were in the house of Amrit after the incident. He denied the suggestion put forth by the defence that he did not come to the place of occurrence and did not find any of the accused. PW-9 further stated that he and Kripesh (PW-8) went to Fatikroy Outpost and informed the incident when Litan was being shifted to Kailashahar hospital from Fatikroy hospital and disclosed the names of the accused persons. Proceeding further, PW-9 stated that he did not deposit or hand over the 'lathis' to the police at the police station from his own.

24. PW-10, Parendra Sabdakar deposed that while he was sleeping in his house at 7:30 am on 02.01.2015, hearing hue and cry he rushed to the house of Amrit Sabdakar (PW-6) where he found the accused persons assaulting Litan Sarkar with a branch of tree. He got frightened and returned back to home.

During cross-examination, he stated that Litan was his maternal uncle. His house was three houses away from the house of Amrit Sabdakar. He was not examined by the police in this connection and he gave evidence in the court for the first time. At the time of incident, Litan was staying with his wife. PW-10 further stated that Litan and his father were not residing in the same mess but they were residing in nearby houses. He further stated that he saw the incident on the courtyard of Amrit

Sabdakar (PW-6). He denied the suggestion that he had not seen the accused persons assaulting Litan with the branch of tree.

25. PW-11, Smt. Kanchana Sabdakar stated that on the day of incident, at about 7:30 am, he rushed to the house of Amrit Sabdakar and found the accused persons assaulting Litan Sabdakar with a branch of tree. The accused persons Bhanu Sabdakar pressed the throat of Amrit Sabdakar and Dharendra Sabdakar pressed the chest and hand of Litan within his boot. Other villagers came and the accused persons had left the place.

During cross-examination she stated that the deceased Litan was her husband. She gave statement to the police that the accused persons assaulted Litan. She further stated that she could not remember what she exactly stated to police. She further stated that she did not state to police that hearing hue and cry at the house of Amrit Sabdakar she rushed to there. When her attention was drawn to her statement made under Section 161, CrPC, she volunteered that the courtyard of them and Amrit Sabdakar is common. Villagers also rushed to the spot. She denied the suggestion that she did not see the accused persons assaulting Litan with a branch of tree. She denied the suggestion that Kripesh and Amrit assaulted Litan as he had illicit relation with Jharna Sabdakar or that Litan suffered injury due to that assault.

26. PW-12, Smt. Jharna Sabdakar being aunt of Litan deposed that while she was cooking at about 7:30 am, she heard hue and cry in the house of Amrit Sabdakar and rushed there and found that Litan was being assaulted by two brothers namely Dipankar and Subhankar Sabdakar and as a result, he fell down on the ground and started bleeding from his mouth. Then Dharendra Sabdakar with his boot trampled the face and chest of Litan. Amrit Sabdakar came to save Litan and then Bhanu Sabdakar came and pressed the throat of Amrit. The accused persons fled away when villagers came.

During cross-examination she deposed that on the day her husband was not at his house. There was a common courtyard of their house with Amrit. When she reached to the spot, except the accused persons she did not find anyone. PW-12 stated that assault was committed in the courtyard and later on inside the room. She further deposed that the accused persons did not come together and they came one after another. She denied the suggestion that she did not rush to the place of occurrence and did not find Litan being assaulted by two brothers namely Dipankar and Subhankar Sabdakar or that Litan fell down on the ground. She admitted in cross-examination that she and Kanchan rushed to the spot at a time.

27. PW-13, Usha Sabdakar deposed that while she was working in her house at about 7:30 am on 02.01.2015 the accused persons came to their house and started assaulting Litan in the room with a branch of tree and Litan fell down on the verandah. Then, Dharendra Sabdakar came and pressed Litan with his boot in his chest. Thereafter, Bhanu Sabdakar came and pressed the throat of her husband Amrit. Litan was taken to Fatikroy Hospital.

During cross-examination, she stated that their house is surrounded by the houses of her in-laws. She further stated that on the day of occurrence police went to their house at day time and at that time her husband was not in his house. She further stated that police did not interrogate her and she also did not talk to them. She gave statement to police on 03.01.2015 in her house. She denied the suggestion that the accused persons did not come to their house and assaulted Litan.

28. PW-14, Dr. Niladri Sengupta deposed that he communicated to the police about the death of Litan Sabdakar on 10.01.2015 [Exbt.4].

29. PW-15, Dr. Pranab Choudhury deposed that on 11-01-2015 he was posted at the department of Forensic Medicine & Toxicology at AGMC & GBP Hospital as Asstt. Professor. On that day he conducted postmortem examination over the body of Litan Sabdakar. He stated in his

deposition that on examination he found there was one stitched wound present on the left side frontoparietal region with 8 nos. of stitches measuring 9 cm in length. It was situated 6 cm above the attachment of left ear and 5.8 cm behind the left eyebrow. There were extravasations of blood present all over left side parietal, part of right side parietal and left temporal and both side frontal region. Bar hole operation mark was present on the left side postero lateral aspect of parietal bone in an area of 1.8 cm X 1.6 cm. Extra dural haemorrhage was present all over the left side parietal and part of temporal region with mass effect. It was caused by impact of hard and blunt object. He opined that the cause of death was coma, due to head injury of impact of some hard and blunt object. He further stated that this type of object i.e. the tree branches present in the court could produce such injury. He identified his report and his signature [Exbt.5].

During cross-examination, PW-15 stated that there was single injury. He further stated that he did not get any external injury on the deceased. The deceased was surgically operated i.e. Bar hole operation was done. PW-15 further stated that such injury could happen if one falls on any hard substance with great force or clash with hard substance with great force. He further stated that the stick present before the court would not be

able to produce such injury. There was possibility of presence of blood stain on such 'lathi' in case of bleeding injury.

30. PW-16, Raju Datta, the SI of police who investigated the case. He deposed that during his investigation he examined and recorded the statements of available witnesses, seized the weapon of offence i.e. branches of tree, collected the inquest report, the report of postmortem examination and further collected the injury report of Litan from the Dr. Sucharita Chakma of Fatikroy CHC. Thereafter, he arrested the accused persons.

During his cross-examination, PW-16 stated that he took over the case for investigation on 11.01.2015 and made a prayer for adding Section 302 of IPC due to the death of Litan on 10.01.2015. PW-16 specifically stated that the incident took place on 02.01.2015 at 7:30 am and before registration of the case there was no other information about the incident in the police station. He stated that as per hand sketch map and index prepared by earlier IO, the index A was the place of occurrence. There was no indication of any verandah in the index A. Index B stood for kitchen house of Amrti Sabdakar; index 'C' stood for dwelling house of Kripesh Sabdakar and 'D' stood for dwelling house of accused Dharendra Sabdakar, now deceased. PW-16 further stated that in the index there was

no indication of house of deceased Litan Sabdakar. He did not re-seize the articles which were seized by Sunil Debbarma. He further stated that there was no note in the case diary as to why four witnesses namely Amrit Sabdakar, Sujit Sabdakar, Nripendra Sabdakar and Subhrendu Das were not examined by the earlier IO. He denied the suggestion that the said witnesses were subsequently examined only to make out the case.

During his cross-examination, PW-16 stated that Niva Sabdakar, PW-1 did not state to him under Section 161 CrPC that Usha Sabdakar (PW-13) told her that the accused persons had assaulted Litan Sabdakar. PW-4, Nripendra Sabdakar did not state to him under Section 161 CrPC that first they attacked him and pushed him down and then attacked Litan and he also did not state to him (PW-16) as to who assaulted him and at what place. Exbt. A i.e. statement of 161, CrPC of Kripesh Sabdakar was confirmed. PW-16 further stated in his cross-examination that PW-6 Amrit Sabdakar told him that Litan was brushing his teeth by sitting in his courtyard.

31. On close scrutiny of the evidence on record, it transpires that PW-4 Nripendra Sabdakar being the father of the deceased in his evidence deposed that the assailants first attacked him at his house with 'lathi' causing injury to his hand. Thereafter, the deceased Litan came and at that

time they assaulted Litan with the 'lathi' on his head. Litan bled profusely and fell down on the ground. We find a different story on the version of Amrit Sabdakar (PW-6). He has stated that while Litan was washing his mouth in front of his hut then the assailants started assaulting Litan on his head. He tried to save Litan but the assailants pressed his throat. Thereafter, Litan's father came forward when the assailants attacked him. Thus, two different versions from these two witnesses have come to the fore.

31.1 It is also surfaced that in between the house of Nripendra (PW-4) and Amrit (PW-6), the house of Brajendra (PW-9) is situated. Naturally, question arises about the exact place of occurrence.

31.2 Again, from the deposition of PW-13, Usha Sabdakar, the wife of Amrit, it reveals that the incident occurred at the verandah of the hut of Amrit. The prosecution has tried to make out a case that the incident had occurred at the common courtyard of PW-4 and PW-6. But from the evidence of PW-11, it is revealed that this statement is her improved version since such statement is not found in her statement recorded under Section 161, CrPC.

31.3 Further, from the evidence of PW-9, Brajendra, it is revealed that police has visited to their house on the same date of the incident in the afternoon, but, they have not disclosed the incident to the police. More so,

on the date of incident in the afternoon he has gone to the playground to play. PW-8, Kripesh has stated that he and Brajendra (PW-9) had snatched away the 'lathi' from the assailants. Question arises if such incident has happened, then, when Brajendra has not disclosed the same to the police when they have visited the place of occurrence on the same day. More surprising feature is that when such a serious incident had occurred on 02.01.2015 but the FIR was lodged on 04.01.2015. Evidence reveals that there were so many near relatives of the deceased but none of them has informed the police about the incident.

31.4 PW-4, PW-6 and PW-8 have stated that they also have been beaten by the assailants but no injury reports have been produced before the court by the prosecution. PW-8, Kripesh who is said to be lodged the case has stated that while they were proceeding towards Fatikroy PHC he himself informed the Police Outpost, but, the police officer of that Outpost has stated that no information had passed on to them on that date. PW-8, the complainant has further stated that they disclosed the name of the assailants to the Doctor who had treated them, but, Dr. Sucharit Chakma of Fatikroy PHC has not been produced as witness to support the statement.

32. Next, all the related witnesses have stated that Litan was severely assaulted by all the assailants but Dr. Pranab Chowdhury, PW-15

in his postmortem examination report and during his deposition has stated that the death has been caused only by one blow on the head of the deceased and there is no injury mark on other parts of the body of the deceased.

33. Next, PW-9 Brajendra Sabdakar has stated that the police had recovered three branches of tree from the house of Amrit (PW-6) after three days. According to us, this is also a doubtful circumstance regarding recovery of the weapons of offence which are allegedly used by the assailants. Even the three branches have not been properly identified by the witnesses.

34. The above factors have led the trial court to record a finding that the prosecution has failed to substantiate the charges levelled against the accused persons beyond reasonable doubt. Further, according to the related witnesses many of the villagers had rushed to the spot and on their arrival the assailants had left the place of occurrence. But, none of the villagers came forward to support the versions of these related witnesses. PW-3, Sujit Sabdakar, appears to be an independent witness who has stated that he came to know about the incident of assault from Ketaki Sabdakar and Phani Sabdakar who witnessed the incident of alleged assault but, the prosecution has failed to produce and examine them. It further appears that

prosecution has further failed to unearth the actual fact by adducing cogent evidence as to why the assailants had attacked Litan or his father on the date and time. In our opinion, discrepancies in the prosecution case are manifold which influenced the learned Sessions Judge for acquitting and extending the assailants the benefit of doubt.

35. In our opinion, the view as taken by the learned Sessions Judge in acquitting the accused persons that it appears to be a possible and plausible and for the reasons as afore-discussed, the view of the learned Sessions Judge cannot be held to be perverse. True it is, this in an appeal against acquittal, powers of the appellate court are as wide as that of the trial court and in exercise of our appellate jurisdiction we can review, re-appreciate and re-consider the entire evidence brought on record by the parties and can come to our own conclusion on fact as well as on law. But, we are not un-oblivious of the well-known principle that if two views are possible on the basis of evidence on record and one favourable to the accused has been taken by the trial court, the same should not be disturbed in exercise of our appellate jurisdiction. *Firstly*, the instant appeal starts with the double presumption of innocence in favour of the accused persons available to them under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is found to

be guilty by a competent court of law. *Secondly*, the accused persons having secured an acquittal, the presumption of their innocence is reinforced, reaffirmed and strengthened by the trial court. According to us, as an appellate court, it is not open for us to interfere with the findings of fact recorded by the learned trial Judge unless such findings reached by him suffer from perversity or incompetence on his part.

36. We have taken note of the decision of ***Rajkishore Purohit Vrs. State of Madhya Pradesh & Ors., (2017) 9 SCC 483*** as referred to by Mr. P. Roy Barman, learned Sr. counsel appearing for the appellant but on facts we cannot place reliance upon the said decision to reverse the finding of acquittal on benefit of doubt. In ***Rajkishore (supra)*** the High Court has altered the finding of conviction and sentence passed by the trial court acquitting the accused persons but the Supreme Court has held that the High Court has committed an error in appreciating and negating the evidence on the basis of which the learned trial Judge convicted and sentenced accused persons.

36.1 The case in our hand is not such a case where the decision of the trial court is based on unacceptable and unreliable evidence, rather there are substantial and acceptable evidence to return the findings of acquittal.

36.2 In *Kanhaiya Lal & Ors. etc. Vrs. State of Rajasthan, etc. (2013) 5 SCC 655*, the Apex Court held that unless there are substantial and compelling reason, judgment of acquittal cannot be overturned.

37. In view of the material contradictions and discrepancies discussed in the preceding paragraphs and keeping in mind the settled proposition of law on the subject, the findings arrived at by the learned trial Judge cannot be said to be perverse and there is no good and compelling circumstances to overturn the judgment of acquittal of accused persons on benefit of doubt.

38. For the reasons stated and discussed here-in-above, the present appeal fails and deserves to be dismissed and is accordingly dismissed. We give our stamp to the judgment and order of acquittal of the accused persons on benefit of doubt as recorded by the learned Sessions Judge, Unakoti Judicial District vide judgment dated 18.04.2018 in case No. Sessions Trial 21(U/K) of 2015.

Send down the LCRs.

(ARINDAM LODH) J

(AKIL KURESHI) CJ