

THE HIGH COURT OF TRIPURA
AGARTALA

CRL.PETN. 35 OF 2014

Shri Raju Lal Das,
S/O. Shri Chandan Kumar Das,
Resident of Siddhi Ashram,
Kalimata Sangha,
P.S.- Amtali,
District-West Tripura.

..... **Accused Petitioner.**

- V e r s u s -

The State of Tripura.

..... **Respondent.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the petitioner	: Mr. P.K. Biswas, Sr. Advocate, Mr. H.K. Bhowmik, Advocate, Mr. P. Majumder, Advocate.
For the respondent	: Mr. A. Ghosh, P.P.
Date of hearing and delivery of judgment and order.	: 19.06.2014.
Whether fit for reporting	: YES.

JUDGMENT & ORDER (ORAL)

This case discloses a very depressing state of affairs in the manner in which a Sessions Trial has been conducted both by the Court and the Counsel.

2. The accused Raju Lal Das has been charged with committing an offence punishable under Section 436 read with Section 302 of the Indian Penal Code (IPC). The prosecution story

is that he murdered his wife. The police report was filed in the Court of Sub-Divisional Judicial Magistrate, Bishalgarh on 03-04-2010. Thereafter, the case was committed to the Court of Sessions Judge, West Tripura, Agartala on 01-10-2010 and the accused Raju Lal Das appeared before the Court of Session for the first time on 09-11-2010. He was granted bail by the Sessions Judge and the case was transferred to the Court of the learned Additional Sessions Judge, Court No.2, Agartala and the matter was listed on 15-12-2010.

3. Thereafter, Charge was framed against the accused on 14-01-2011 and for the first time a calendar was fixed for examining the witnesses on 21-03-2011, 22-03-2011, 23-03-2011, 24-03-2011 and 25-03-2011. 5(five) witnesses were ordered to be examined on each date. The order of 21-03-2011 reads that no witness was present, on 22-03-2011 no witness appeared, on 23-03-2011 no witness, on 24-03-2011 no witness and on 25-03-2011 no witness appeared and the fresh summons were ordered to be issued. In the orders dated 21st, 22nd, 23rd and 24th March, 2011, the Court has not even tried to ascertain why the witnesses had not appeared. Had summons been issued to them? Had the police taken steps to summon the witnesses? Nothing is clear from the order. On 25-03-2011, it is stated that no PW is present as previous order was not complied with. Who did not comply with the order? Why was the order not complied with? These questions remain unanswered.

4. In a Sessions Trial, if a case is fixed for evidence, it is the duty of the prosecution to take steps to produce the witnesses. If steps are not taken, then the Court must record on the first date itself that steps have not been taken. If steps had not been taken for serving any of the witnesses what was the use of taking up the case on four subsequent dates and wasting the time of the Court and the counsel. On the first date itself, the Judge could have ascertained whether the witnesses had been summoned for the subsequent dates or not.

5. In any event, on 25-03-2011 a fresh calendar was fixed fixing the case for 16-05-2011, 18-05-2011, 19-05-2011, 20-05-2011 and 21-05-2011. On 16-05-2011 the order reads that witnesses are examined, cross-examined and discharged. The accused submitted documents. From the record, I find that in fact only 2 witnesses were examined on 16-05-2011 whereas 5 had been summoned for the said date. The learned Judge in his order did not record that out of the 5 witnesses only 2 had been examined. Why the other 3 witnesses were not present has not been recorded in the order. On 18-05-2011, it is recorded that the APP is present with 3 witnesses who have been examined. This part of the order is absolutely right. However, nothing has been written as to why the other 2 witnesses who were summoned for this date were not served or not present. On 19-05-2011, only 2 P.W.s were present and examined. Again there is no order as to why the other 3 witnesses were not present. On 20-05-2011 only 1

witness was present and examined. Nothing else was stated. On 21-05-2011, 3 witnesses were examined. Thus, in this calendar out of the 25 witnesses, 11 witnesses were examined which would mean that there were still 14 witnesses left to be summoned.

6. However, in the calendar now fixed for 3 dates on 14-07-2011, 15-07-2011 and 16-07-2011 only 11 witnesses were summoned. In the order sheets from 16-05-2011 to 21-05-2011, the learned APP had not given up any witnesses and, therefore, in the fresh calendar there should have been 14 witnesses but there are 11 witnesses which again show that the Judge was not applying his mind. On 14-07-2011 no witnesses were present and even the APP was absent. On 15-07-2011 no witnesses were present and the APP was again absent. Even the Presiding Officer was on Casual Leave. On 16-07-2011 only one witness was present who was not examined since the Presiding Officer was on leave.

7. Thereafter, the case was taken up by the Presiding Officer on 25-07-2011 and the case was listed on 01-09-2011 and 02-09-2011. On the previous three dates, no witnesses were examined and prior to that, as against 14 witnesses to be summoned only 11 were summoned. Surprisingly, now in the calendar fixed only 5 witnesses were summoned and the case was fixed for 01-09-2011 for examining 3 witnesses and on 02-09-2011 for examining 2 witnesses. On 01-09-2011, the APP was absent on the ground that he had gone to Kolkata for his medical treatment and, therefore, one witness who was present was not examined

and discharged. On this date, the accused also stated that he could not afford to pay his counsel any longer and, therefore, a counsel may be engaged for him on State cost. Accordingly, Mr. Pranabasis Majumder was appointed amicus curiae and the matter was adjourned to the date already fixed, i.e. 02-09-2011. There was no point in adjourning the case to 02-09-2011 except for discharging the witnesses if they were present because when a fresh amicus curiae had been appointed to assist the Court, the least that was expected was that in a murder trial he would be given at least a week or 10 days time to examine the record. In the order appointing him, I find that there is no direction that copy of the police report and other documents be supplied to him. What is the use of appointing a legal aid counsel, if he is not given sufficient time to prepare the case? What is the purpose of appointing a legal aid counsel, if the copies of the police report is not supplied to him?

8. In any event, on 02-09-2011 a petition was filed seeking adjournment on behalf of the Public Prosecutor and thereafter the case was fixed for 08-11-2011 and 09-11-2011 and 5 witnesses were ordered to be summoned for these two dates. On 08-11-2011 and 09-11-2011 the Court was without a regular Presiding Officer and the matter was adjourned to 24-01-2012. The Presiding Officer was not appointed and the matter was taken up finally on 31-03-2012 when the Presiding Officer was on leave and the matter was adjourned for more than two months. A matter,

that is a Sessions Trial which was already 2 years old was adjourned for two months to 04-06-2012 only for the purpose of fixing a date for the evidence of the witnesses.

9. On 04-06-2012, probably the Presiding Officer examined the entire record and found out that there were many other witnesses who had still to be examined and who had not been summoned after the initial two calendars and, therefore, on 04-06-2012 the Presiding Officer passed an order fixing the case for 03-09-2012, 04-09-2012 and 05-09-2012 and now the case was fixed for the examination of 14 witnesses. On 03-09-2012, the matter was adjourned because of the fact that a member of the Bar (not a counsel in the case) had expired. I have no issue with the date being granted on this ground, but there is no order by the Presiding Officer as to whether witnesses were present, whether they were not present, whether they had been summoned or whether they had not been summoned. On 04-09-2012, the APP was present with 3 witnesses. Only one witness was examined and on the request of the APP the two witnesses who were unexamined were directed to appear on the next date, i.e. 05-09-2012. On 05-09-2012 only one witness namely Sanjoy Laskar was present. He was examined. There is nothing in the order as to why the witnesses who were present on the previous day and who had been bound down to appear in Court the next day, i.e. 05-09-2012 did not appear and why warrants were not issued against them. In a routine manner, the case was adjourned. A fresh calendar was

fixed for 02-01-2013, 03-01-2013 and 04-01-2013 for examination of 12 remaining witnesses. Again a date of almost 4 months was granted in a Sessions Trial. I cannot understand why such a long adjournment was granted. In Tripura, the average pendency of cases per Judge is much less than the average pendency in other Courts in the country and, therefore, one would expect that shorter dates would be given.

10. On 02-01-2013, the learned APP was present but no witness appeared and the case was adjourned for 03-01-2013 without any further reason being given. On 03-01-2013, two witnesses were present. They were examined and the case was adjourned to 04-01-2013. On 04-01-2013, no witness was present for the prosecution. The learned amicus curiae moved an application for adjournment and the case was adjourned to 20-02-2013, 21-02-2013 and 22-02-2013 for examination of remaining 9 witnesses. Though the case was adjourned to 20-02-2013, in the records I find no order sheet of 20-02-2013 or 21-02-2013. In the records produced in Court, the only order is of 22-02-2013. On that day, the accused was absent because it was stated that he had met with an accident and the case was adjourned to 18-04-2013, 19-04-2013 and 20-04-2013 for the examination of 9 witnesses.

11. On 18-04-2013, it was mentioned that no PW was present. The learned APP was also not present. The matter was adjourned to 19-04-2013. On 19-04-2013, again no PW was

present and the APP was also not present. The case was not taken up on 20-04-2013 probably because the witnesses had not been summoned but it is also not reflected in the order sheet as to why the case was not taken up on 20-04-2013. On 19-04-2013, the case was adjourned to 17-06-2013, 18-06-2013 and 19-06-2013 for examination of these witnesses.

12. On 17-06-2013, two witnesses were present and at this stage learned APP prayed that one of the witnesses namely Nitai Saha be discharged without examination because he had already been examined. Nitai Saha was PW-1 and why he was recalled again is beyond my imagination. The witness was discharged without examination. The statement of the other witnesses was recorded. On 18-06-2013, only one witness was present and he was examined. On 19-06-2013 it is mentioned that witnesses present are examined, cross-examined and discharged. The number of witnesses or their names is not mentioned. However, on perusal of the record, I find that on 19-06-2013 statement of PW-18 and PW-19 were recorded. Therefore, as against three witnesses summoned for this date, only 2 were present. Why the third witness was not present is not mentioned in the order.

13. The matter was again adjourned in a very casual manner and calendar fixed for 13-08-2013, 14-08-2013 and 16-08-2013. On 13-08-2013, two witnesses were summoned, for 14-08-2013 three witnesses were summoned and for 16-08-2013, two witnesses were summoned. There was no improvement even on

these dates. There was no witness present on 13-08-2013, 14-08-2013 and 16-08-2013. Again the matter was adjourned to 06-11-2013 for examining 3 witnesses and for 07-11-2013 for examining 2 witnesses. On 06-11-2013, no witness was present. On 07-11-2013 no witness was present and the matter was adjourned to 09-01-2014 and 10-01-2014. On 09-01-2014 again no witness was present. On 10-01-2014 only the Investigating Officer of the case was present but no other witness was present. It was prayed that the Investigating Officer may not be examined at this stage and he be examined after examining the other witnesses. This request being genuine was allowed and the matter was adjourned to 13-03-2014 and 14-03-2014 for recording the statement of 4 witnesses. On 13-03-2014 again no PWs were present and on 14-03-2014, two witnesses were present. Both were examined, but only one was cross-examined and the amicus curiae prayed for time to cross-examine the second witness who was the Investigating Officer of the case. This prayer was allowed and the APP was directed to produce the I.O. on the next date. Therefore, the case was fixed on 18-03-2014 for cross-examination of the I.O. However, there is no order with regard to the remaining witnesses. There is nothing on record to show that the APP had given up those witnesses or that the Court had closed the evidence of the prosecution. The case was only adjourned for the purpose of cross-examination of the Investigating Officer without the Court recording anything in its order sheet to show as to why the other witnesses were not being examined.

14. We are dealing here with a Sessions Trial relating to the alleged murder of the wife by the accused-husband. What message will be sent to society if the approach is so casual? On 18-03-2014, the learned amicus curiae refused to cross-examine the I.O. on the ground that he wanted to recall PW-1 and PW-2 for further cross-examination. The learned Court recorded that the I.O. was present and examined in-chief on the previous occasion whereafter the learned counsel had prayed for adjournment to cross-examine the witnesses. He was granted a date on his assurance that he would cross-examine the I.O. on the next date. When the I.O. appeared, the counsel refused to cross-examine the I.O. A prayer was made that witnesses No.1 and 2 be recalled for cross-examination as due to some mistake certain very important questions were not put to the witnesses. What was this mistake is not spelt out in the application or even in the oral argument made before the learned Court. On this date, the learned Judge passed an order that this is an old case of 2010. He also held that PW-1 and 2 were examined and cross-examined on 16-05-2011 and subjected to lengthy cross-examination. Therefore, he rejected the prayer of the amicus curiae. Since the learned amicus curiae had refused to cross-examine the I.O., he closed the evidence of the prosecution and listed the matter on 29-03-2014 for recording the statement of the accused under Section 313 of Cr.P.C. This order is under challenge.

15. Before moving further, I am pained to point out that on 28-04-2014 a statement was made before the trial Court on behalf of the accused that the order dated 18-03-2014 passed by the trial Court had been challenged before this Court. Unfortunately, who was present on behalf of the accused is not mentioned in the order and, therefore, I cannot say with certainty who made this absolutely false statement. The fact is that the petition wherein this order dated 18-03-2014 was challenged was only filed on 05-06-2014 and on 28-04-2014 when the statement was made before the learned trial Court, no such petition had been filed and thus a totally false statement was made. This Court expects something better from the counsel or the parties appearing in the Court. I do not want to say anything more than this at this stage.

16. This is a shocking case where in a Sessions Trial 44 dates have been fixed for recording the evidence of the witnesses. In none of the orders is it mentioned why the witnesses were not present on a particular date. If it was fault of the officials of the Police Court who assist these Courts in the State of Tripura, then responsibility should have been fixed on the erring officials. If the witnesses were not present despite the witnesses being served,ailable or non-ailable warrants should have been issued to procure their presence. When witnesses were present, adjournments were granted for the mere asking. If this is the way cases, that too important Sessions Cases, are handled, then the public would be justified if it loses faith in the judicial system. That

cannot be permitted because if the public loses faith in the judicial system, it will spell the death knell of our entire democratic society.

17. The witnesses are the worst sufferers in our legal system. All the other stakeholders in the judicial system have some vested interest. A Judge is employed and gets his salary because there are disputes both civil and criminal. Lawyers are engaged by the parties and get paid for their work. The litigants have come to Court seeking relief. The Court staff is there being paid a salary. The only stakeholder in this judicial system who has no personal vested interest is a witness. The role of a witness is to assist the Court by telling the truth. Unfortunately, the manner in which we treat our witnesses in the country leaves much to be desired. They are treated shabbily. They are given no respect and they are treated worse than the criminals. Witnesses are made to stand from morning to evening in Court, given some excuse and told to go home in the evening and a pittance may be paid for appearing in Court.

18. Our Courts may have good Court rooms, Bar rooms, litigant halls, but there is rarely a Court complex which has a witness shed where they can sit when it rains. Therefore, there is an urgent need to rethink the manner in which we handle the cases and treat the witnesses. When the witness steps into the witness box, sometimes the only question put to him in cross-examination is that he is a liar or that he is speaking the untruth to help the

other party. A witness has to be cross-examined effectively with regard to his examination-in-chief and if it is found that he is not consistent in his statement or cannot explain some discrepancies, then such suggestion may be put to him but this suggestion as the first suggestion should never be permitted to be put by the Court.

19. In this criminal petition, I have made the effort to go through each and every order because I have been shocked by the manner in which a Sessions Trial has been conducted. The manner in which the dates have been fixed, the manner in which the witnesses have been left out and added leave no doubt in my mind that the Presiding Officer(s) had no control over their Court. Probably it is the ministerial staff who was dictating the orders and fixing the dates. This shall not be permitted in future and this may go as a warning to every Judicial Officer that he risks losing his job in case it is found that the matters are dealt with in such a casual fashion. It is the responsibility of this Court to ensure that no such occurrence takes place in future. Therefore, the following directions are issued:-

(i) The Presiding Officer of the Court shall invariably maintain a chart or a diary and shall himself fix the dates of the cases in each and every case;

(ii) The dates shall be fixed keeping in view the case flow rules and case flow management rules as well as all other rules and directions issued by the Court;

(iii) Priority shall be given to prioritized cases, such as cases of senior citizens, cases involving matrimonial disputes etc.;

(iv) In all cases, especially in Sessions cases, care shall be taken to mention in the order sheet the names and the witness number of each and every witness who is examined on a particular date. The names of the witnesses who are present but not examined shall also be clearly mentioned in the order sheet. The reasons for not examining the witnesses shall also be clearly mentioned in the order sheet;

(v) If steps have not been taken by a party or the State to summon the witnesses, then that shall be reflected in the order sheet. If summons are not issued by Court staff or by the police officials, then an inquiry shall be conducted and the responsibility shall be fixed on the erring officials, Court staff or police officials;

(vi) If witnesses are not present despite being served, then action in accordance with law, the CPC or the Cr.P.C. whichever may be applicable, shall be taken;

(vii) In a sessions case, an effort must be made to see that the witnesses are examined during the calendar and the Court Inspector attached to the Court should inform the Court well in advance why the witnesses have not been served. In criminal cases, it is essential that witnesses are examined at the earliest when their memory is fresh and there is no use of examining a

witness after five years because he would invariably have forgotten many details and there will be inconsistencies in the statements;

(viii) In Sessions Trial, an effort shall be made to dispose of the sessions trial within 6 months of the framing of the Charge and dates shall be fixed accordingly;

(ix) In cases involving crimes against woman, the period shall be 4 months;

(x) Dates should not be given merely at the asking of the counsel for the parties, especially in a sessions trial where witnesses are present. The Public Prosecutor or the defence counsel must make arrangements to ensure that somebody is prepared to examine or cross-examine the witnesses;

(xi) This Court is aware that in criminal cases the accused cannot go unrepresented and, therefore, sometimes if the counsel for the accused does not appear, then a date may have to be given, but as far as possible only one date should be allowed for this purpose;

(xii) When witnesses are present, they should be examined even if the Court has to sit beyond court hours and they should not normally be sent home unexamined unless there are very very compelling reasons for the same;

(xiii) When the list of witnesses is filed whether in a criminal case or in a civil case, the Court is authorised under law to ask the counsel filing the list of witnesses as to what is the purpose of examining the witnesses and what do they have to prove. It is not necessary that the witnesses have to be summoned serial wise

as mentioned in the list of witnesses. Even at the time of fixing the calendar, it should be ensured that eye witnesses are examined on one date so that contradictions, if any, can be brought out and they cannot be tutored either by the prosecution or by the defence. If there are different sets of witnesses, those different sets of witnesses must be examined on separate dates keeping in view the nature of their examination;

(xiv) In all cases where medical experts such as, doctors or other persons who have other pursuits to follow appear as witnesses, they should be examined at 10 a.m. in the morning so that the doctor can go to the hospital and do his work instead of sitting in Court for 4/5 hours a day;

(xv) In all cases if a witness is given up by the party, the said fact shall be clearly reflected in the order sheet. In a criminal case if the Public Prosecutor gives up certain witnesses, then the reason given by the P.P./APP for not examining the said witnesses must also be recorded.

20. The Registrar General is directed to ensure that a copy of this judgment is sent to all members of the Tripura Judicial Service forthwith whether they are performing judicial duties or not.

21. All the members of the Tripura Judicial Service are directed to ensure that they follow this judgment in letter and spirit, failing which stern action shall be taken against them.

22. A copy of this judgment be also sent to the Secretary, Law, Government of Tripura to make adequate arrangements that Public Prosecutors/Additional Public Prosecutors attend to their work in Court and do not ask for adjournments time and again.

23. As far as the present case is concerned, though the case is more than 4 years old, I find that the manner in which the dates have been granted leaves much to be desired. The manner in which the accused was represented, especially by his first counsel was also not proper.

24. Sri P.K. Biswas, learned Sr. Counsel appearing for the accused, submitted that the only question which is required to be asked from the witnesses No.1 and 2 is to confront them with their statements recorded under Section 161 of Cr.P.C. to the limited extent that the victim did not name the accused and this fact is not stated in their statement under Section 161 Cr.P.C. The request of the accused is allowed to this limited extent alone and no further or other question shall be permitted to be asked. The PWs No.1 and 2 may be recalled for this purpose alone on the next date and thereafter, the prosecution may examine all its other remaining witnesses if it so desires including the I.O.

25. The case has been fixed by the trial Court on 09-07-2014. The parties are directed to appear before the trial Court on the same date. The Court shall fix a date in the month of July itself for recording the cross-examination of PWs 1 and 2 and the cross-examination of the PW-25(I.O.). At the most, two dates shall be

fixed in the month of July itself for examination of all the witnesses. Thereafter, the statement under Section 313 Cr.P.C. shall be recorded on or before 15-08-2014. In case, the defence wants to lead defence evidence, the same shall be completed latest by 15-09-2014. In case, the defence chooses not to examine any witnesses, then the matter shall be heard and decided by 31-08-2014 and if the defence chooses to lead defence evidence, then the matter shall be heard and decided by 30-09-2014.

26. With these directions, the petition is allowed.
27. Send down the lower court records forthwith.

CHIEF JUSTICE