

**HIGH COURT OF TRIPURA
AGARTALA
CRL. A NO.2 OF 2022**

Shri Roman Chowdhury

..... **Appellant(s)**

Vs.

The State of Tripura

..... **Respondent(s)**

For the Petitioner(s) : Mr. S. Lodh, Advocate.
Mr. Kishalay Roy, Advocate.

For the Respondent(s) : Mr. S. Ghosh, Addl. P.P.

Date of hearing and delivery of
Judgment & Order : 02.05.2023.

Whether fit for reporting : YES/NO.

HON'BLE MR JUSTICE T. AMARNATH GOUD

JUDGMENT AND ORDER(ORAL)

This present Criminal appeal is filed under Section 374 of the Code of Criminal Procedure, 1973, against the impugned Judgment of conviction and sentence dated 15.02.2022, passed by the learned Sessions Judge, Gomati District, Udaipur in ST 29 of 19, whereby the learned Sessions Judge has convicted the appellant for committing offence, punishable under Section 324 of Indian Penal Code, and sentenced him to suffer R.I. for 1(one) year and also to pay a fine of Rs.10,000/- and in default in making payment of fine, the

appellant has to suffer further Rigorous Imprisonment for 3(three) months.

2. The brief fact of the prosecution case is that the wife of the appellant, Smti, Dharmilata Tripura(Chowdhury), lodged a written complaint before the Officer-in-Charge of Birganj P.S., alleging *inter alia* that marriage between the appellant and the informant was solemnized 1(one) year back from the date of lodging the complaint, and after the marriage, she was subjected to mental and physical torture by the appellant and her mother-in-law, Smti Madhabi Debbarma(Chowdhury) with a view to coerce her to fulfill illegal demand of dowry. It is further alleged that the degree of torture on demand of dowry was raised to an extent that on 03.06.2019 at about 11.00. P.M., her husband i.e. the appellant herein, inflicted 'dao' blows on her head and neck, and the incident took place in the presence of her mother-in-law, and due to this she sustained bleeding injuries. Thereafter, she was taken to Amarpur Hospital. On receipt of the aforesaid complaint, police registered a case vide Birganj P.S. Case No.38 of 2019 dated 06.06.2019 for committing offences punishable under Section 498A, 326 & 34 of IPC against the appellant and his mother. After registration of the case, the appellant was arrested, and he was in custody for a substantial period. After investigation,

police submitted charge-sheet against the appellant for committing offences punishable under Sections 498A, 307, 109, 324 & 34 of IPC, and also filed charge-sheet against his mother, Smti. Madhabi Debbarma(Chowdhury) for committing offences punishable under Sections 109 & 34 of IPC.

3. On receipt of the charge sheet, learned Sub-Divisional Magistrate, Amarpur, took cognizance of the offences under Sections 498A, 307 & 34 of IPC and under Sections 109 & 34 of IPC and committed the case to the learned Court of the Sessions Judge, Gomati Judicial District, for trial. After commitment, learned Sessions Judge, framed charge against the appellant for committing offences punishable under Section 489A, 307 & 34 of IPC and against the mother, Smt. Madhabi Debbarma(Chowdhury) for committing offence punishable under Sections 498A & 307 of IPC.

4. To prove the case, the prosecution side examined as many as 8(eight) witnesses, whereas, on behalf of the appellant no witness was examined. After examination of the accused persons under Sections 313 of Cr.P.C. and after hearing both the parties, the learned Sessions Judge, Gomati District vide impugned Judgment of conviction and sentence dated 15.02.2022 convicted the appellant as mentioned herein-above.

5. Being aggrieved and dissatisfied with the impugned Judgment of conviction and sentence dated 15.02.2022 passed by the learned Sessions Judge, Gomati District, Udaipur, in ST 29 of 19, the appellant prefers the instant criminal appeal praying to set aside and said impugned judgment and award.

6. Heard Mr. S. Lodh, learned counsel appearing for the appellant as well as Mr. S. Ghosh, learned Addl. P.P. appearing for the respondents.

7. Mr. Lodh, learned counsel appearing for the appellant submits that the impugned judgment of the learned Court below is bad on the account of misreading and non-reading of the evidence on records. The learned Court below failed to appreciate that the prosecution had projected a false case against the appellant. On careful examination of the depositions of the prosecution witnesses, it is revealed that the prosecution with mala fida intention instituted the false case against the appellant, but the learned Court below failed to appreciate the same. Further, the prosecution witnesses in their deposition contradict each other which make their deposition untrustworthy in the eye of the law. As such the case against the appellant herein is not established beyond reasonable doubt. Further, there is discrepancy between the injury as stated by the victim and the injury report.

8. On the other hand, Mr. S. Ghosh, learned counsel appearing for the respondents submits that medical evidence support that the victim was assaulted and urged this Court to uphold the impugned Judgment and Order.

9. Heard learned counsel appearing for both parties and perusing the evidence on record.

10. The victim herein i.e. P.W.3 in her statement stated that her husband gave 'dao' blows near her left ear, shoulder, and neck causing bleeding injuries. But the statement of P.W.-1, Dr. Mistu Das, revealed that on 04.06.2019 he examined the victim and he opined that there was cut injuries over the scalp area measuring(4cmx1.5x1.5)cm and the injury was simple in nature. Further in the cross examination, it is stated that the age of the injury was not mentioned and he wrote the case number at the time of the examination of the patient. So, the Doctor examined the victim on 04.06.2019 and wrote the report on another date. This raises doubt in the mind of the Court. There is further discrepancy on the point of who brought the victim to the hospital among the prosecution witness. The victim deposed that nearby people shifted her to the hospital after the alleged incident. But P.W.-5 stated that the fire service shifted the victim to the hospital. So this also raises doubt in the mind of the Court.

11. It is to be borne in mind that in criminal cases, guilt is to be established beyond reasonable doubt. But in the present case there is discrepancy among the prosecution witnesses and also in the injury report. But yet, keeping in mind the gravity of the incident, this Court is of the opinion that the conviction of the accused as passed by Court below in order dated 15.02.2022 under Section 324 of the IPC shall be confined to the days the accused has undergone imprisonment during his remand and trial period. However the fine of Rs.10,000/- remains intact. The same shall be deposited in the trial Court within 1(one) month from today and the victim is permitted to withdraw the said amount of Rs.10,000/- unconditionally.

12. With the above observation and direction, this present writ petition is allowed to the extent indicated above. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.

JUDGE