

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.A(J) No.13/2022

Sri Satrughna Tripura, S/O. Late Arun Kumar Tripura, resident of Kukurampara, Sonaibari, P.S.-Belonia, District-South Tripura, Tripura. (Now suffering rigorous imprisonment in Central Jail, Bishalgarh, Tripura)

..... Convict-Appellant(s)

V E R S U S

The State of Tripura

.....Respondent(s)

For Appellant(s) : Mr. D.K. Daschoudhury, Advocate.

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

HON'BLE THE CHIEF JUSTICE (ACTING)

Date of hearing and judgment : **4th January, 2023.**

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

Heard Mr. D.K. Daschoudhury, learned counsel appearing for the convict-appellant. Also heard Mr. S. Debnath, learned Additional Public Prosecutor appearing for the respondent-State.

2. This criminal appeal filed under Section 374(2) read with Section 383 of the Code of Criminal Procedure (*Cr.P.C., for short*) is directed against the judgment dated 26.04.2021 passed by the learned Sessions Judge, South Tripura, Belonia in case No. S.T. 45 (Type-I) of 2019

whereby the learned Sessions Judge has convicted the accused-appellant under Sections 326/307 of the Indian Penal Code (*IPC, for short*) and sentenced him to suffer R.I. for five years and to pay a fine of Rs.10,000/- in default to suffer S.I. for one year for commission of offence punishable under Section 326 of the IPC and also to suffer R.I. for seven years and to pay a fine of Rs.10,000/- in default to suffer S.I. for one year for commission of offence punishable under Section 307 of the IPC. Both the sentences shall run concurrently.

3. Learned counsel appearing for the appellant has prayed for the following reliefs:

- "(i) Admit the appeal;
- (ii) Notice the respondent;
- (iii) Call for the trial Court records;
- (iv) After hearing set aside the impugned judgment and orders of conviction and sentences and acquit the appellant from the charges leveled against him;

AND

- (v) Pass any other order as Hon'ble High Court deems fit and proper."

4. The facts of the case revealed from the F.I.R. as well as from record, in a nutshell, are that about 20 years back, marriage was solemnized between the victim Smt. Panchamala Tripura and accused Satrugna Tripura

and they led their conjugal life more or less happily for about five years. Thereafter, the accused started torture upon the victim both physically and mentally. Due to their wedlock, the victim gave birth to four daughters and one son. On 30.12.2018 at about 1200 hours the accused assaulted the victim by a dao resulting which she sustained grievous injury on her neck. Thereafter, the victim was shifted to Hrishyamukh CHC wherefrom she was referred to Belonia Hospital. Accordingly, an F.I.R. was registered and after investigation, charge-sheet was submitted against the accused Satrugna Tripura under Sections 498A/326/307 of IPC. Thereafter, the case being exclusively triable by the Court of Sessions, learned Chief Judicial Magistrate, South Tripura, Belonia committed the case for trial to the Court of Sessions Judge where charge was framed against the accused under Sections 326 and 307 of IPC to which he pleaded not guilty and claimed to be tried. After completion of trial, learned trial Judge vide judgment dated 26.04.2021 convicted the accused-appellant under Sections 326/307 of the IPC and sentenced him to suffer R.I. for five years and to pay a fine of Rs.10,000/- in default to suffer S.I. for one year for commission of offence punishable under Section 326 of the IPC and also to suffer R.I. for seven years and to pay a fine of Rs.10,000/- in default to suffer S.I. for one year for commission of offence punishable under Section 307 of the IPC. Assailing

the impugned judgment of the learned Sessions Judge, accused has filed this criminal appeal.

5. Mr. D.K. Daschoudhury, learned counsel appearing for the appellant, contends that the learned Sessions Judge failed to appreciate the evidence of the prosecution witnesses, *inter alia*, accepting the injuries of the victim as grievous by ignoring the fact of non-production of the Medical Officer of Belonia Sub-Divisional Hospital who conducted medical examination over the victim to ascertain the nature and gravity of her injuries. He further contends that in the instant case, non-examination of the medical expert is fatal in respect of the accused-appellant. Had the report of the medical expert been exhibited by examining the Medical Officer, the nature of injuries sustained by the victim would at best constitute a simple offence. Accordingly, he prays for setting aside the impugned judgment dated 26.04.2021 passed by the learned Sessions Judge.

6. On the other hand, Mr. S. Debnath, learned Addl. Public Prosecutor appearing for the respondent-State, vehemently objected the submissions advanced by the learned counsel for the appellant contending that the learned Sessions Judge has rightly convicted the appellant under Sections 326/307 of IPC by appreciating the evidence of prosecution

witnesses. Accordingly, he contends that there is no error in the impugned judgment passed by the learned Sessions Judge and prays for dismissal of the appeal.

7. Having considered the submissions of learned counsel for both the parties, this Court is of the considered view that there is inconsistencies of evidence of prosecution witnesses with regard to voluntarily causing grievous hurt upon the victim with sharp-edged weapon ('dao') with an attempt to kill her and the learned Court below has failed to appreciate such evidence of prosecution witnesses and committed an error while passing the judgment and as such, learned counsel for the appellant has made out a case for interfering in the appellate jurisdiction.

8. It is apparent from the record that the accused appellant is in custody under conviction. Accordingly, the impugned judgment dated 26.04.2021 passed by the learned Sessions Judge, South Tripura, Belonia in case No. S.T. 45 (Type-I) of 2019 is hereby modified to the extent that the conviction of the appellant is restricted to the amount of period he has undergone in custody till today and as such, he be released from jail custody forthwith. Release order be issued accordingly.

9. With the above observations, this criminal appeal is partly allowed and disposed of.

10. Send down the lower court records forthwith and copy of judgment to concerned jail.

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

CHIEF JUSTICE (ACTING)



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