

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.A(J) No.27/2023

Sri Biswajit Das, S/O. Sri Sukuranjan Das, Resident of Vill.-East Mirja, North Kaladepa, P.O. and P.S.- Kakraban, District-Gomati Tripura, At present residing in Udaipur District Jail, Gomati Tripura.

..... Convict/Appellant(s).

V E R S U S

The State of Tripura

.....Respondent(s).

For Appellant(s) : Mr. B. Banerjee, Advocate,
Ms. R. Majumder, Advocate.

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

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and judgment: **21st July, 2023.**

Whether fit for reporting : **NO.**

JUDGMENT & ORDER(ORAL)

Heard Mr. B. Banerjee, learned counsel appearing for the appellant and Mr. S. Debnath, learned Addl. Public Prosecutor appearing for the respondent-State.

2. By the impugned judgment dated 25.08.2022 passed by the learned Sessions Judge, Gomati District, Udaipur in case No. S.T.-41 of 2021, the sole accused/appellant herein has been convicted for the offence punishable under Section 325 of the Indian Penal Code (IPC, for short) and sentenced to undergo rigorous imprisonment for 4(four) years with a fine of Rs.10,000/- (rupees ten thousand) and a default sentence. The learned trial Court has disbelieved the prosecution story as alleged under Sections 498A and 307 of

the IPC and as such, he has been acquitted of the charges under those provisions.

3. Mr. B. Banerjee, learned counsel for the appellant, submits that the complainant is the wife of the appellant. The incidence of alleged assault took place on 19.06.2021. The FIR was registered on 21.06.2021. The appellant was taken in custody on 21.06.2021. Charge-sheets were submitted on 30.06.2021 and charges were framed on 28.09.2021. Petitioner denied the charges and trial commenced. Altogether 11 (eleven) witnesses were examined including the victim/wife, her in-laws, independent witnesses, Medical Officer and Investigating Officer. Apart from that, certain documents such as, seizure list and injury report were also exhibited as Exhibit-2/2 and Exhibit-5 respectively.

It is submitted that the prosecution story as regards alleged torture for demand of dowry during subsistence of the marriage in terms of Section 498A of the IPC and the allegation as regards an attempt to commit murder of the wife has been disbelieved. However, since the injury report adduced by the prosecution witness No.11, Dr. Snehasish Datta, the Medical Officer, showed fracture of right collar bone, which was said to have been inflicted by the appellant by a 'dao' blow and the wife was admitted in hospital on 19.06.2021, the learned trial Court has taking into consideration the material evidence on record proceeded to convict him for the offence punishable under Section 325 of the IPC for voluntarily causing grievous hurt.

It is submitted that the Medical Officer has, however, also stated that he cannot say whether the stitched wound is caused by sharp cutting weapon. He has also stated during cross-examination that during delivery of

the child the injury in the right clavicle is possible. It is possible in road traffic accident also. He has not mentioned that the injuries have been caused by sharp cutting weapon.

4. Learned counsel for the appellant submits that PW-1 is the wife and complainant who has during her deposition though supported the prosecution case set up by her but there is no explanation for the delay in lodging the FIR after 2(two) days even though she was allegedly taken to the hospital on 19.06.2021.

PW-2 is the brother of the accused who is a hearsay witness.

PW-3 is the neighbour of the victim who is also a hearsay witness.

PW-4, mother of the accused, has stated that she and her husband have been staying separately due to the frequent troubles created by the accused who is addicted to liquor. As such, she is also a hearsay witness.

PW-5, the elder sister of the victim, is also a hearsay witness who had gone to the hospital to visit her victim sister and saw her injuries.

PW-6 is also a neighbour of the accused and a hearsay witness.

PW-7, father of the accused, has also admitted in his deposition that the accused is addicted to liquor and creates trouble in his house and sometimes attacks the family members. Last year, the accused abandoned his son and wife and so they kept his son and wife with them. After some time, the accused returned. On 19.06.2021 after consuming liquor when he returned to home, an altercation took place when he pushed his wife on the floor and thereafter allegedly assaulted her by a 'dao' which caused bleeding injuries on the head. However, it is submitted that this incidence occurred in the house of the accused. Therefore, he is also a hearsay witness.

PW-8, is a member of the Panchayat who met the victim in the hospital and PW-9 is a seizure list witness.

PW-10 is the Investigating Officer who has submitted the charge-sheet along with the injury report. However, she did not collect any report to indicate that the injury took place by sharp cutting weapon.

It is submitted that the allegation of assault by a sharp cutting weapon is not supported by the injury report as the Medical Officer (PW-11) has clearly deposed that he has not given any such report and also the Investigating Officer has not been able to support the said allegation.

The appellant has during his statement under Section 313 of Cr.P.C. also categorically stated that the allegations made by the complainant are not true. She fell down and got injured.

It is submitted that the incidence though may be assumed to be true between the husband and the wife but the allegation of demand of dowry or attempt to cause murder has been disbelieved by the learned trial Court. As such, appellant who has suffered custody since 21.06.2021 till date, i.e. about 2 years and 1 month out of the total sentence of 4 years awarded upon him may be released by modifying the sentence to the period undergone. The wife is suffering as the appellant is inside the jail. There is an 11 year old son who also has been suffering in the absence of the father. The appellant is repentant of his deeds and interest of justice would be met if he is released by modifying the sentence to the period undergone.

5. Mr. S. Debnath, learned Addl. Public Prosecutor appearing for the respondent-State, has opposed the prayer. He submits that the allegations relating to assault by sharp cutting weapon and that too, on a vital part of the

body, i.e. right collar bone has been substantiated by the injury report. Since the fracture of the lateral end of right clavicle (Collar bone) is grievous in nature caused by blunt weapon, therefore, learned trial Court taking into consideration the statements of the complainant/wife (PW-1), brother of the accused (PW-2), mother of the accused (PW-4) and father of the accused (PW-7) has rightly convicted the accused/appellant for the offence under Section 325 of the IPC and sentenced him to undergo rigorous imprisonment for 4(four) years which is less than the maximum punishment. Learned Addl. Public Prosecutor, however, does not dispute that the learned trial Court has disbelieved the charges under Sections 498A and 307 of the IPC as the prosecution had not been able to prove it beyond reasonable doubt. As such, he submits that the findings of the learned trial Court are based upon due and proper appreciation of the materials adduced by the prosecution and do not suffer from any infirmity. The appellant has in his statement under Section 313 of the Cr.P.C. generally denied the allegation. Therefore, the appeal may be dismissed.

6. I have considered the submissions of learned counsel for the parties and gone through the relevant materials placed from the lower Court records including the depositions of 11(eleven) prosecution witnesses and the injury report (Exhibit-5). The present case arises out of a complaint by the victim/wife against her husband, the appellant herein, on allegations of torture due to demand of dowry, voluntarily causing grievous hurt and also an attempt to murder. It, however, appears from the materials adduced by the prosecution on record that no specific case of demand of dowry and consequent infliction of cruelty in marriage has been established by the prosecution. Moreover,

learned trial Court has also disbelieved the charge under Section 307 of the IPC of the appellant having attempted to cause murder of his wife. The Medical Officer has taken into note the fracture of the lateral end of right clavicle (Collar bone) and opined that the injury though grievous in nature has been caused by blunt weapon. However, he has stated that he is not in a position to say whether the stitched wound is caused by sharp cutting weapon. The evidence of the victim (PW-1) and the relatives of the accused/appellant, i.e. his brother (PW-2), mother (PW-4) and father (PW-7) though not having seen the actual assault caused by the appellant cannot be shrugged aside on the ground that they have not seen the occurrence as they point to the conduct and behaviour of the appellant as regularly addicted to liquor and causing trouble in the household. The findings of the learned trial Court on the charge under Section 325 of the IPC, therefore, do not appear from any error in the appreciation of evidence. The victim, however, is a wife and with an 11 year old son to maintain. The appellant has remained in custody for 2 years and 1 month by now. The learned trial Court has also considered that there is no previous conviction proved against him and he is a young man with entire life before him and thereafter proceeded to impose the sentence of 4(four) years against the maximum sentence of 7 years under Section 325 of the IPC.

7. Having regard to the totality of the facts and circumstances, that the findings rendered by the learned trial Court and that the charges under Sections 498A and 307 of the IPC have been disbelieved by the learned trial Court and the incidence has occurred between the husband and the wife, this Court is inclined to modify the sentence of 4(four) years imposed upon the

appellant to 2(two) years and 6(six) months. The period undergone by the convict shall be set off in terms of Section 428 of the Cr.P.C.

8. With the aforesaid modification in sentence, the instant appeal is partly allowed.

Consequently, the pending suspension petition [I.A. No.02 of 2023] also stands disposed of.

9. Send down the lower Court records forthwith.

(APARESH KUMAR SINGH), CJ

PULAK BANIK Date: 2023.07.28
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