

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
Crl.A(J). No. 15 of 2022

1. Sri Manish Chakraborty, son of late Manjula Chakraborty, resident of North Jogendranagar, P.S. East Agartala, District: West Tripura.

.....Appellant

-VERSUS-

1. The State of Tripura.

..... Respondent.

B_E_F_O_R_E
HON'BLE THE CHIEF JUSTICE (ACTING)

For Appellant(s)	:	Mr. S. Talapatra, Advocate. Mr. S. Das, Advocate.
For Respondent(s)	:	Mr. S. Debnath, Addl. P.P.
Date of hearing & delivery of judgment and order	:	06.01.2023
Whether fit for reporting	:	NO

JUDGMENT & ORDER [ORAL]

Heard S. Talapatra and Mr. S. Das, learned counsel appearing for the petitioner. Also heard Mr. S. Debnath, learned Addl. P.P. appearing for the respondent.

[2] This is an application filed under Section-374 of the Code of Criminal Procedure, 1973 against the judgment and order of conviction passed in Session Trial S.T. (Type-1) 13 of 2020 dated 21.12.2021 by the learned Sessions Judge, West Tripura, Agartala for setting aside the judgment and order of conviction whereby, sentenced to suffer RI for 5 years with a fine of Rs.5,000/- punishable under Section-325 of the IPC and in default to suffer SI for six months. Further sentenced to suffer RI for 5 years under Section-307 of IPC with a fine of Rs.5,000/- with default stipulations.

[3] The prosecution case in brief is that on 16.09.2019 at about 1250 hours informant Bishal Dhar lodged an ehajar with the East Agartala Police Station to the effect that on that date at about 6 a.m. in the morning one

Debasish Dey was going towards Vidya Sagar Girls H.S. School (morning shift) from his house by walking and on his way, when he reached at Mahashakti road at about 0615 hours the accused Manish Chakraborty restrained the victim and gave blows on his head with an wooden file. The victim sustained grievous injuries on his person due to assault and became unconscious and immediately he was taken to GBP Hospital for treatment wherein he was admitted for a reasonable period of time.

[4] After closure of the investigation, chargesheet has been filed on 30.11.2019 against the accused under Sections 341/325/307 of I.P.C. before the Learned Judicial Magistrate 1st Class, Agartala, West Tripura and the learned Court after supplying prosecution papers, committed the case to the Court of Sessions for trial as the offence under Section-307 of I.P.C. was exclusively triable by the Court of Sessions.

[5] To substantiate the charges under Sections-325/341 and 302 of the IPC, the prosecution has examined as many as 8 witnesses and after closure of the prosecution, accusation was read over and explained to the accused and examined under Section-313 of Cr.P.C. wherein he stated that the prosecution case is false and declined to adduce any witness from his side.

[6] After hearing the parties and perusal of the evidence on record, the learned Court below has observed as under:

“46. In the result, the prosecution has proved this case beyond all reasonable doubt against accused Manish Chakraborty under Sections 325 and 307 of I.P.C. Accordingly, the accused is convicted under Sections 325 and 307 of I.P.C.

47. At the same time the prosecution has failed to prove its case so far the charge under Section 341 of I.P.C. is concerned.

48. I have heard the convict on the question of sentence and the convict pleaded that he is innocent and did not commit the offence.

49. The aforesaid plea of the convict cannot be accepted as there is sufficient evidence to conclude that the convict committed the offence and it was a voluntary act and without any provocation from the side of the victim.

50. I have also thought on the quantum of sentence appropriate for this case and considering the nature of offence as well as nature of injury sustained by the victim, I am of the view that the sentence of imprisonment of 5(five) years along with fine of Rs.5,000/- (Rupees Five thousand) for each for the offences under Sections 325 and 307 of I.P.C. will suffice to render justice in this case.

51. Accordingly, the convict Manish Chakraborty is sentenced to suffer rigorous imprisonment for 5(five) years under Section 325 of I.P.C. The convict is also sentenced to pay a fine of Rs.5,000/- (Rupees Five thousand) under Section 325 of I.P.C. and in default, shall have to suffer imprisonment for further six months.

52. The convict Manish Chakraborty is also sentenced to suffer rigorous imprisonment for 5(five) years under Section 307 of I.P.C. The convict is also sentenced to pay a fine of Rs.5,000/-(Rupees Five thousand) under Section 307 of I.P.C. and in default, shall have to suffer imprisonment for further six months.

53. Both the sentences shall run concurrently.”

[7] Being aggrieved by and dissatisfied with the impugned judgment and order of conviction, the appellant herein, has preferred this appeal before this Court for ends of justice.

[8] Learned counsel appearing for the appellant has submitted that the Court below has failed to appreciate the law in contrast with the facts of this case. He has submitted that there is no evidence so far as the charge under Section-325 and 307 of the IPC against the appellant and as such, the impugned judgment and conviction is liable to be set aside.

[9] There is no cause of action committed within jurisdiction of the police authority as well as the Court also to cause an investigation and as a consequence the trial and hence, the judgment and conviction is liable to be interfered with by this Court. There is also no evidence that the victim was attacked by the appellant and in absence of such evidences, the judgment and conviction is liable to be quashed.

[10] The learned Court below has failed to appreciate the evidence of PW-1, PW-2, PW-3, PW-4 and PW-5 as nobody has been stated that they have seen the appellant attack the victim with the wooden file even their evidence has been full of contradiction an omission and in any case conviction cannot be

based only with such evidence. There is no ingredients of Section-325 and 307 of IPC and in absence of such evidence on record, the finding as returned by the learned Court below is ex-facie illegal.

[11] The learned Court below has failed to appreciate that the investigating authority never seized the article by which the said incident occurred though, PWs. 4 and 5 categorically stated that they have taken the wooden file from the appellant and called the police which is not far away from the place of occurrence and in absence of such strict proof, the conviction is against the law.

[12] Learned counsel appearing for the appellant has further contended that the learned Court below in absence of any eye witnesses the offences so disclosed solely banking upon the circumstantial evidences and the chain of the entire prosecution is broken in each and every aspect, appreciating in a different manner bypassing the rule of law and there by committed a serious miscarriage of justice and thus the impugned judgment and order conviction must be interfered with.

[13] The learned Court below has also failed to appreciate the medical evidences as well as the statement of the PW-8 wherein he has stated that initially the injury report has been made as a RTA and thereafter, Sections-307 and 325 have been written in the report and subsequently, deleted Section-184 of M.V. Act, which speaks *ifso-facto* that there is something which the investigating authority intentionally trying to escape and in absence of any proper evidence, the conviction under Section-307 and Section-325 is illegal and liable to be set aside.

[14] The way the prosecution has projected the case and being found serious contradictions and inconsistencies in the statements in course of trial, it would be very difficult for this Court to believe the projected case of the prosecution. It is settled proposition of law that the charge framed against the accused person has to be established and proved beyond any shadow of doubt. Suspicions, however, grave in nature, should not amount to prove. The discrepancies which are found in this case as analyzed above, appeared to be

abnormal in nature which is not expected from a normal person. After cautious scrutiny of the evidence and considering the entire chain of circumstances, this Court finds it difficult to arrive at a finding to draw the hypothesis of guilt against the accused-appellant.

[15] In view of above analysis of the facts surfaced in the present case, according to this Court, the prosecution has failed to establish the case against the accused-appellant under Sections-325 and 307 of IPC and consequently, the judgment and order of conviction dated 21.12.2021 passed in S.T. (Type-1) 13 of 2020 by the learned Sessions Judge, West Tripura, Agartala, is hereby set aside and quashed. Thus, the appeal stands **partly** allowed and he shall be released forthwith, if not wanted in connection with any other cases. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs.

CHIEF JUSTICE (ACTING)

A.Ghash

