

**HIGH COURT OF TRIPURA
AGARTALA
CRL. ANO.09 OF 2022**

The State of Tripura

..... Appellant(s)

Vs.

Sri Krishna Gopal Das

..... Respondent(s)

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

For the Respondent(s) : Mr. D.J Saha, Advocate.

Date of hearing and delivery of
Judgment & Order : 10.05.2023.

Whether fit for reporting : YES/NO.

HON'BLE MR JUSTICE T. AMARNATH GOUD

JUDGMENT AND ORDER(ORAL)

This present appeal has been filed under Section 378(1)(b) of the Code of Criminal Procedure, 1973, against the impugned Judgment and Order of acquittal dated 07.09.2021, passed by the learned Addl. Sessions Judge, Gomati Judicial District, Udaipur, in case No.S.T. 40(GT/A) of 2017 whereby, the learned Court below has acquitted the accused respondent herein from premises of the charges under Section 341/325/307 of Indian Penal Code.

2. The brief fact of this case is that a Criminal Law was set in motion with the lodging of the first information report by one Gobinda Chandra Das, S/o. Late Ananta Kumar Das of Bampur

under PS Birganj, Gomati, Tripura alleging inter alia to the facts that on 12.08.2016 morning time at around 8.00 am his wife namely Smt. Kalpana Rani Das, while returning home from the house of fellow villager, namely, Anil Pal was restrained by accused Krishna Gopal Das and brutally assaulted on her head and face with bricks and coconuts coupled with the intention to kill and left unconscious at the place of occurrence. Meanwhile, the accused himself informed the complainant that Smt. Kalpana Rani Das (wife of the complainant) lying unconscious therein. Then complainant rushed to the place of occurrence and found his wife with bleeding injuries and on being asked his wife named Krishna Gopal Das as an assailant. Thereafter she was taken to Amarpur Sub-divisional Hospital and from there referred to GB Hospital.

3. The O/C of Birganj PS, Amarpur, Gomati District received the ejahar on 12.08.2016 at around 14.57 hours and registered a case vide Birganj PS Case No. 2016 BRG 034 under Sections 341/325/307 of IPC and the S.I. of Police namely Shri Sankar Nag was entrusted with the case for its investigation. The IO visited the P.O. by preparing a hand sketch map with a separate index and recorded the statement of witnesses under Section 161 of Cr.P.C., prepared seizure memo dated 12.08.2016. The IO also collected the injury report of the victim from AGMC & GBP Hospital, Agartala, and the forensic examination report from TSFSL,

Narsingarh, Agartala. After the completion of the investigation the I.O. submitted charge sheet dated 17.07.2017 under Sections 341/325/307 of IPC against the accused person namely Krishna Gopal Das.

4. The learned Sub-Divisional Judicial Magistrate, Amarapur, Gomati District received the charge sheet on 25.07.2017 and after taking cognizance of offences punishable under Sections 341/325/307 of IPC, transferred the case record to the Court of learned Judicial Magistrate First Class, Amarapur, Gomati Tripura for disposal in accordance with the law. On 18.09.2017 learned Judicial Magistrate First Class, Amarapur has committed the case to the Court of Learned Sessions Judge, Gomati Judicial District, Udaipur, and subsequently, this case has been transferred to Court below vide order dated 22.09.2017 for trial according to law.

5. On receipt of the case record learned Addl. Sessions on 09.03.2018 framed the charge for the commission of offence punishable under Sections 341/325/307 of IPC against the accused person namely Krishna Gopal Das to which he pleaded not guilty.

6. The Charges against the accused were as follows:-

"That on 12.08.2016 at about 0800 hours at Bampur Purba Samatal Para, under PS Birganj, District – Gomati Tripura, wrongfully restrained Smti Kalpana Das and you thereby committed an offence punishable under Section 341 of IPC and within my cognizance.

That you on the same date, time and place voluntarily caused grievous hurt to Smti Kalpana Das by brick and coconut and you thereby committed an offence punishable under Section 325 of IPC and within my cognizance.

That you on the same date, time and place voluntarily caused hurt to Smti Kalpana Das with such intention and knowledge and under such circumstances, that if by that act you had caused the death of said Smti Kalpana Das, you would have been guilty of murder and you hereby committed an offence punishable under Section 307 of IPC and within my cognizance.

And, I hereby direct that you be tried on the said charges by this court."

7. To prove the charge, prosecution side has examined as many as 12 witnesses including the IO which are produced herein-under:-

PW 1 Shri Dipankar Das, Other witness
PW 2 Shri Gobinda Chandra Das, Other witness
PW 3 Shri Pranajit Das, Other witness
PW 4 Shri Amraj Das, Other witness
PW.5 Smti. Kalpana Das, Eye witness
PW 6 Shri Biplab Das Other, witness
PW.7 Shri Ashim Das Other, witness
PW.8 Smti. Mita Das alias Mithu, Other witness
PW 9 Smti Laxmi Dey, Other witness
PW.10 Dr. Sabyasachi Nath, Expert witness
PW.11 Shri Sankar Nag, Police witness
PW 12 Dr. Anarsh Debbarma, Medical witness

8. The prosecution also examined some documents (Exbt-P-1 to Exbt-P-9/1). After the completion of prosecution witnesses accused person was examined under Section-313 Cr.P.C to which he declined to adduce any DWs and responded in negative almost to all the questions put forward to him.

9. Thereafter the arguments from both sides were heard on 25.08.2021 and after hearing the arguments, at length, the judgment was delivered on 07.09.2021, whereby the present accused person was acquitted from the premises of the Section 341/325/307 of IPC.

10. Being aggrieved and dissatisfied by the said Judgment and Order of acquittal dated 07.09.2021 passed by the learned Addl. Sessions Judge, Gomati District, Udaipur, the present petitioner, representing the State has preferred this appeal for setting aside and quashing the impugned Judgment and Order of acquittal dated 07.09.2021.

11. Heard Mr. S. Ghosh, learned Addl. P.P. appearing for the appellant-State as well as Mr. D. Saha, learned counsel appearing for the respondent.

12. Mr. Ghosh, learned Addl. P.P. appearing for the appellant-State submits that the nature of the crime involved in this present appeal is grievous in nature and the learned Trial Court below arrived at wrong and unwarranted findings causing a grave miscarriage of justice. Hence the impugned Judgment and Order is liable to be set aside and quashed. The learned Court below has not properly appreciated the evidence on record and arrived at a wrong finding.

13. On the other hand, Mr. D. Saha, learned counsel appearing for the respondent submits that the Judgment and Order as passed by the Court below is just and proper and passed after proper appreciation of evidence.

14. Heard both sides and perused the evidence on record.

15. This Court has perused and examined the Judgment and Order as passed by the Court below on 07.09.2021. While acquitting the respondent herein, the Court below has substantially gone into the evidence on record and has given proper finding on the same. After such examination of the evidence on record the Court below observed thus:-

"In the case at hands after careful scrutiny the evidence of PW's it is emerged that the circumstantial evidence is incomplete and not incapable of explanation of any other hypothesis than that of the guilt of the accused."

16. After examination of the Judgment and Order as passed by the Court below, this Court is of the opinion that the Judgment and Order dated 07.09.2021 as passed by the Court below is just and proper and needs no further interference. As such, the same is upheld.

17. With the above observation and direction, this present appeal stands dismissed. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.

JUDGE