

**HIGH COURT OF TRIPURA  
AGARTALA**

**Crl.A(J) No.19 of 2024**

**Sri Ramu Roy Barman,**  
S/o. Sri Tapan Roy Barman  
Resident of Gokulpur, Ward No.3,  
P.S. R.K. Pur, Dist. Gomati Tripura.

.....Appellant(s)

*Versus*

**The State of Tripura.**

.....Respondent(s)

For Appellant(s) : Mr. S. Das, Legal-Aid-Counsel.

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

Date of Hearing & Judgment : **06<sup>th</sup> September, 2024.**

Whether fit for reporting :

| YES | NO |
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|     | √  |

**HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

**JUDGMENT & ORDER (ORAL)**

Heard Mr. S. Das, learned legal aid counsel for the appellant. Also heard Mr. S. Ghosh, learned Addl. P.P. for the respondent-State.

**[2]** The judgment under challenge in this appeal is the judgment of conviction dated 16.08.2023 and consequent sentence passed on 17.08.2023 by learned Additional Sessions Judge, Gomati, Udaipur in Sessions Trial(Type-I) No.42 of 2021 whereby the appellant was convicted under Sections 307 and 326 of Indian Penal Code(*for short IPC*) and was sentenced to suffer rigorous imprisonment for 5(five) years with fine of Rs.5,000/- under Section 307 IPC and in default to pay the fine, to suffer simple imprisonment for 4(four) months and also to suffer rigorous

imprisonment for 3(three) years and to pay the fine of Rs.3,000/- under Section 326 of IPC and in default of payment of fine, to suffer simple imprisonment for 3(three) months. Both the sentences were directed to run concurrently.

**[3]** The allegations unfolded through the F.I.R lodged by one Smt. Archana Datta, on 13.06.2020 at Radhakishorepur Police Station are that marriage of her daughter Smti Pinki Dutta [PW.3] was solemnized with the appellant in the year 2010 and after 3/4 years of such marriage, at the instance of mother of the appellant, he started causing torture upon the victim on demand of Rs.50,000/- and in default of meeting such demand intensity of the torture was increased day by day and ultimately, on 10.06.2020 at about 12 p.m. in the noon both the mother and son tied up the victim by a cloth with the cot after closing the door and brutally assaulted her physically with an intention to kill her and on her outcry, the locals rescued her and took her to District Hospital, Tepania.

**[4]** The Police Authority registered the case under Sections 498A, 109 and 307 of IPC and also laid the charge sheet under the above said provisions after completion of investigation. Learned Trial Court framed charge under Sections 498A and 307 IPC and also under 326 IPC. The appellant denied the charges. Finally, learned Trial Court acquitted the accused appellant from the charge under Section 498A IPC and convicted him under Sections 307 and 326 IPC as indicated above.

**[5]** During trial, the prosecution examined total 10 witnesses out of which, PW.1, Smti. Kajali Dey, is sister-in-law of the victim from her in-laws side and PW.2, is her mother. The victim was examined as PW.3, and the Medical Officer who treated the victim was examined as PW.10. They are the prime witnesses of the prosecution case.

**[6]** Mr. S. Das, learned legal aid counsel strenuously argues that the Medical Officer specifically stated that the injuries caused upon the victim was by blunt object and therefore, Section 326 IPC was not applicable in this case and moreover, there was no evidence that the appellant had requisite knowledge or intention of causing death of the victim and therefore, conviction under Section 307 IPC was also not proper. Mr. Das, learned legal aid counsel further contends that as per evidence of the victim, suddenly the appellant entered into the room, locked his door and started physically assaulting her without any provocation or quarrel which itself was not believable and moreover, if said fact is taken into consideration, in that case Section 325 IPC will not be applicable. According to learned legal aid counsel, there must be some sort of provocation from the side of victim to attract Section 325 IPC.

**[7]** Mr. S. Ghosh, learned Addl. P.P. on the other hand contends that the nature of injury is immaterial in case of the applicability of Section 307 IPC and in the case in hand, there was grievous injury on the head of the victim which sufficiently

signifies that the appellant had his requisite intention to kill the victim. Therefore, learned Trial Court was justified in convicting the appellant under Section 307 IPC. Regarding applicability of Section 326 IPC, Mr. Ghosh, learned Addl. P.P., however, submits that there is no sufficient material to establish Section 326 IPC so far as the weapon used is concerned, however, Section 325 IPC is sufficiently established in the case.

**[8]** Mr. Ghosh, learned Addl. P.P. also relies on a decision of the Apex Court in case of ***Manubhai Atabhai vs. State of Gujarat, (2007) 10 SCC 358***, in which the Hon'ble Supreme Court observed that the nature of intention has to be gathered from the kind of weapon used, the part of the body hit, amount of force employed and the circumstances attendant upon the death. Learned Addl. P.P. also further relies on another decision of the Apex Court rendered in ***Sadakat Kotwar and Anr. Vs. The State of Jharkhand, [2021 SCC Online SC 1046]***. In said case also same principle was reiterated that nobody can enter into the mind of the accused and his intention has to be ascertained from the weapon used, part of the body chosen for assault and the nature of injury caused.

**[9]** Taking into consideration the rival submissions of the parties, first of all evidence of the victim [PW.3] who is the sole witness of the incident is required to be revisited. So far her evidence regarding continuous physical torture upon her after her marriage on demand of money is concerned, same is not repeated

herein, as there is no appeal challenging the acquittal of the appellant from the charge under Section 498A IPC. However, regarding the incident of said date 10.06.2020, she stated that at around 11.30a.m./12p.m. when she was engaged in her domestic works, suddenly appellant came there, locked the door from inside, forcefully tied up her hands with a cloth with the cot and also tied her mouth with another cloth and thereafter, gave several blows by Dao and Takkal on different portions of her body causing bleeding injuries on her right hand, head and thigh. Somehow, she managed to open her mouth and cried for help to which her parents-in-law and other neighbours rushed there and rescued her after breaking the door and arranged her treatment in the hospital. She further stated that her life would be in danger if she would not be recovered by them at that time. In her cross-examination, it is however found that she did not state to the Investigating Officer about the sudden arrival of the appellant in the room and locking of the door from inside prior to said incident. There is no other significant cross-examination on the incident of said date.

**[10]** The informant i.e. the mother of the victim stated in her evidence that she learnt about the incident of said date from the victim after she regained her sense in the District Hospital. The Medical Officer, Dr. Snehasish Datta [PW.10], however, did not state that the victim was admitted to the hospital in senseless condition. The Medical Officer regarding injuries found in person of

the victim, stated that there was a fracture found on the right forearm bone of ulna which was caused by a blunt object. One lacerated injury of measurement 1×0.5cm on the right wrist and also another lacerated injury of similar measurement on the forehead of the victim were also found by said witness. According to the Medical Officer, all the injuries were severe in nature and were caused by blunt object. The prosecution relied on said version of the Medical Officer. It is however not established that sharp edge of Dao or the Takkal was used. The vital ingredient of Section 307 IPC is that there must be requisite intention and knowledge of the accused as such as is necessary to constitute murder. Here, the Medical Officer did not state anything that such injuries were dangerous for human lives. Two injuries were on the hands and one injury was on the forehead of the victim which was the only injury on the vital part of the body and its measurement was only 1×0.5cm. Therefore, requisite intention or knowledge of the appellant to cause murder of the victim is not established in this case beyond doubt.

**[11]** The reason, as given by learned Trial Court while convicting the accused under Section 307 IPC in paragraph No.26(1) of the impugned judgment, is found to be very feeble and suffers from lack of proper reasoning. Therefore, the conviction under Section 307 IPC cannot sustain.

**[12]** So far as the applicability of Section 326 IPC is concerned, there is no doubt that a fracture or dislocation of any

bone comes within the definition of grievous hurt in terms of Section 320 IPC but when there is no evidence that such injuries were caused by the sharp edge of any dangerous weapon, like Dao or Takkal, learned Trial Court committed err in convicting the appellant under Section 326 IPC. According to the Medical Officer, only blunt force was used to cause such injuries upon the victim. Thus, it appears that the proper provision to be applied was Section 325 IPC.

**[13]** Mr. Das, learned legal aid counsel though strenuously argued that unless there is certain provocation or fight leading to causing of such injury is established, Section 325 IPC will not be applicable, but such submission is also not convincing and acceptable, for, causing of grievous hurt on grave and sudden provocation is not an ingredient of application of Section 325 IPC. Learned legal aid counsel also refers to Section 322 IPC and submits that to attract Section 325 IPC there must be some intention to cause such hurt or must have some knowledge that such hurt would cause grievous injury, but such intention to cause grievous hurt is inferable from the evidence of the victim.

**[14]** Here PW.1, Smti. Kajali Dey, the sister-in-law of the victim, stated that on 10.06.2020 there was a quarrel between the victim and her husband and consequently, the appellant gave Dao blow on the head of the victim causing grievous cut injuries. She has also corroborated with the victim regarding physical assault occurred in the house of the appellant on 10.06.2020. The

statement of the victim also reveals that on the said day of incident she was in the house of her husband and there she received the injuries, but the appellant in his examination under Section 313 Cr.P.C. did not try to explain as to how such injuries were received by her while she was residing with him in his house on that day rather he opted to give simple denials of such evidences.

**[15]** The Apex Court in ***Neel Kumar @ Anil Kumar vs. State of Haryana, (2012) 5 SCC 766***, held that it is the duty of the accused to explain the incriminating circumstance proved against him while making a statement under Section 313 Cr.P.C. Keeping silent and not furnishing any explanation for such circumstance is an additional link in the chain of circumstances to sustain the charges against him.

**[16]** In view of above discussion it appears that the prosecution has not been able to prove the charge under Section 326 IPC but offence under Section 325 IPC is established in the case and similarly, charge under Section 307 IPC also could not be established beyond all reasonable shadow of doubt. As a result, the conviction under 307 IPC is set aside and his conviction under Section 326 IPC is altered to Section 325 IPC.

**[17]** Both the learned counsel submits that the appellant is in custody for about 2 years 5 months and 10 days and in such a circumstance, Mr. Das, learned legal aid counsel earnestly prays for passing the substantive sentence of imprisonment under

Section 325 IPC for a period already undergone by the appellant. Learned counsel also submits that the appellant and the victim are having two school going daughters and for detention of the appellant, they are suffering and the appellant is first time offender.

**[18]** Considering all these aspects, the conviction of the appellant is altered from Section 326 IPC to Section 325 IPC and his conviction and sentence under Section 307 IPC is set aside. However, he is directed to suffer rigorous imprisonment for 2 years and 6 months and to pay a fine of Rs. 5,000/- under Section 325 IPC, and in default to pay the fine to suffer further simple imprisonment for 1(one) month. If fine money is deposited by the appellant, same will be handed over to the victim after her due identification.

**[19]** Sent copies of this judgment immediately to the learned Trial Court and also to the jail authority for taking necessary steps by them.

Registry is to return LC Records accordingly.

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

**JUDGE**