

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.Rev.P.42 of 2023

Md. Gias Unddin

.....Petitioner(s)

Versus

State of Tripura

.....Respondent(s)

For Petitioner(s) : Mr. S. Lodh, Advocate.
Mr. S. Majumder, Advocate.

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

Date of hearing & delivery
of judgment and order : 22.07.224
Whether fit for reporting : Yes/No.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

JUDGMENT & ORDER (ORAL)

Heard Mr. S. Lodh, learned counsel for the petitioner. Also heard Mr. S. Ghosh, learned Addl.PP representing the State.

[2] This criminal revision petition is filed under Section 397 of Cr.P.C. read with Section 401 of Cr.P.C. against the impugned judgment and order dated 24.07.2023 passed by the learned Addl. Sessions Judge, Gomati Judicial District, Udaipur in Criminal Appeal No.04 of 2022 whereby learned Court below has affirmed the conviction and sentence of the petitioner under Section 323 IPC and sentenced him to suffer rigorous imprisonment for 6(six) months and to pay a fine of Rs. 1,000/- and in default of payment of fine, to suffer simple imprisonment for a period of 10 days. By the said order, learned Court below acquitted him from the other charges of 498A & 506 of IPC in PRC(WP) 107 of 2019 passed by the learned Judicial Magistrate, First Class, Udaipur, Gomati.

[3] The brief facts of the prosecution story is that on 22.04.2017 marriage ceremony was solemnized between the complainant (wife of the petitioner) and Gias Uddin (petitioner herein) as per Muslim sariyat after giving cash of Rs.1,00,000/- and all kinds of house hold articles, golden ornaments also given in the marriage. But after few months of marriage, the petitioner and his parents started mental and physical torture upon the complainant on demand of Rs.2,00,000/- or else handing her salary to her husband as she is a Govt. employee. It is alleged that along with her husband, her father-in-law, mother-in-law and sister-in-law also started mental and physical torture upon her on demand of her salary. On 14.12.2017 at about 9.30 hours accused persons started abusing her verbally on demand of money and during that time, she was physically assaulted and driven away from her matrimonial house which compelled her to take shelter at her parental house. Due to pain in her left ear victim went under treatment at TSSD hospital and later on it was found that her eardrum was rupture due to assault. Thereafter, a Shalishi meeting was held in the parental house of the complainant where relative, neighbours and local people from both side were present. After few days of that shalishi meeting one morning the complainant was physically abused by her husband and other accused persons. During this separation period, the younger sister of the complainant received some video clipping of intimate and private moments of the complainant and her husband from a mobile through whatsapp with a warning that if the complainant does not go to her husband house and fulfill his all demand, the same video clip would be uploaded to internet so that the complainant's character will be stained in the society.

[4] On the basis of the ejahar, a case under sections 498(A)/323/354C/120B/34/506 of the Indian Penal Code against the accused person was initiated. The Investigating Officer, conducted the investigation,

prepared the site plan and recorded the statement of various witnesses. During investigation the Investigating Officer has prayed for adding of section 67(A) IT Act, 2000 and accordingly the prayer of the IO was allowed. After completion of investigation, charge-sheet was filed against the accused person Md. Gias Uddin u/s 498(A)/323/354C/506/34 of the Indian Penal Code and against the accused persons Aabu Ahammed @ Abu Ahamed @ Abu Mian and Smti Pairan Bibi @ Pairan Begum u/s 498(A)/323/506/34 of IPC. On receipt of summons and upon appearance before the trial court, the accused persons were supplied with copy of all the relevant documents. During trial the prosecution side, to substantiate its case has examined as many as 17 witnesses. Thereafter, observing all the relevant facts and circumstances, the learned trial Court in case No. PRC (WP) 107 of 2019 passed the following order on 06.04.2022:

"....ORDER

15. In the light of the present case after appreciating the available evidences, the prosecution has successfully brought home the charge u/s 498A/323/506 of IPC against the accused person Md. Gias Uddin and hence he is convicted U/S 498A of IPC to suffer 1 (one) year rigorous imprisonment and to pay a fine of Rs.3,000/-(three thousand) I.d to pay fine, simple imprisonment for 30 days and U/S 323 of IPC to suffer 6 (six) months rigorous imprisonment and to pay a fine of Rs.1,000/-(one thousand) I.d to pay fine, simple imprisonment for 10 days and U/S 506 of IPC to suffer 3(three) months rigorous imprisonment and to pay a fine of Rs.2,000/-(two thousand) I.d to pay fine, simple imprisonment for 20 days. The sentences of imprisonment would run concurrently. The other accused persons namely Aabu Ahammed @ Abu Ahamed @ Abu Mian and Smt. Pairan Bibi @ Pairan Begam are hereby acquitted from the charges u/s 498(A)/323 of IPC and they are set to be at liberty forthwith.

16. If fine money is realized from the convict Md. Gias Uddin @ Gias Uddin then deposit the said money to the treasury by challan through the Nazir of this establishment. The Nazir is directed to deposit the fine money of Rs.6,000/-(six thousand only) to the treasury by challan.

17. Furnish a copy of this judgment to the convict at free of cost as provided under section 363 of Cr.PC.

18. Their surety(s) if any stands discharged from the liability of bail bonds after the expiry of 6 (six) months period which was executed to ensure the attendance of the convict before the Ld. Appellate Court from the date of pronouncing this judgment as a mandate under section 437 A of Cr.P.C.

19. All the seized articles if any in connection with this case are to be disposed as per law.

20. Send a copy of this order to the CTI, Udaipur police court and Nazir of the Establishment of District & Sessions Judge, Gomati Tripura, Udaipur.

21. The case is thus disposed of on contest accordingly....."

[5] Challenging the aforesaid order dated 06.04.2022 passed by the learned trial court below, the petitioner preferred an appeal before the learned Sessions Judge, Gomati District, Udaipur and the same was registered as Criminal Appeal 4 of 2022 and thereafter, the case was transferred to the court of learned Addl. Sessions Judge, Gomati District, Udaipur for its disposal. Learned appellate Court after hearing both the sides, by its order dated 24.07.2023, acquitted the petitioner from the charges under Section 498A/506 of the IPC, but upheld the order of conviction and sentence for committing offence punishable under Section 323 IPC, as passed by the learned trial Court below. Aggrieved by the aforesaid order dated 24.07.2023, the present criminal revision petition has been preferred by the petitioner herein. The relevant contents of the impugned order dated 24.07.2023 is quoted as under:

".....ORDER

23. In the result, the instant appeal is hereby partly allowed.

24. The Judgment of conviction of the appellant passed by the learned trial Court in Case No. PRC(WP) 107 of 2019 under Section 498A/506 IPC is hereby set aside. Accordingly the appellant is hereby acquitted from the charges punishable under Sections 498A/506 of IPC.

25. But this Court is of the opinion that the judgment of the learned Trial Court, convicting the appellant under Section 323 of IPC, does not suffer from any infirmity, warranting interference of this Court which is accordingly upheld. The appellant is directed to surrender before the learned trial Court within one month from this date to serve the sentence. Needless to say that the period of detention already undergone by the appellant shall be set off.

26. Thus the appeal is hereby disposed of on contest....."

[6] Mr. S. Lodh, learned counsel appearing for the petitioner submits that learned Courts below committed serious error in appreciating the deposition of PW-1. PW-1 in her deposition stated that on 14.12.2017 at around 9:30 am, when she was getting ready for her office, her mother-in-law started beating her with fist and blows, and thereafter, her father-in-law also assaulted her and after a while the petitioner came and started slapping her indiscriminately. But, the learned Courts below, acquitted the father-in-law

and mother-in-law of the complainant from the charges punishable under Section 323 IPC. He further submits that when on a similar set of evidence two persons were acquitted, the conviction and sentence of the petitioner is not justifiable and, hence, it is required to be interfered with.

[7] He has further placed reliance on the paragraph 37 of judgment of the Hon'ble Supreme Court passed in ***Ram Singh v. State of Uttar Pradesh*** reported in **(2024) 4 SCC 208**, which is extracted as under:

"37. This Court in *Javed Shaukat Ali Qureshi*, has held that when there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the court cannot convict one accused and acquit the other. This Court clarified as under: (SCC p. 175, para 15)

"15. When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the criminal court should decide like cases alike, and in such cases, the court cannot make a distinction between the two accused, which will amount to discrimination."

[8] On the contrary, Mr. S. Ghosh, learned Addl. PP opposes the submission made by the learned counsel for the petitioner and urges this Court that the order passed by the learned appellate Court below should not be interfered with.

[9] It is seen from record that the complainant wife i.e. PW1 in her deposition on 14.12.2017 stated that at around 9:30 a.m., when she was getting ready for her office her in-laws assaulted her. She has categorically stated that, after a while, her husband came and started slapping her 'indiscriminately'. She sustained severe pain over her left ear wherefrom blood was also oozing. On the following day, she consulted with doctor at Government hospital (PW 13) for her injury and thereafter, consulted one private doctor of ENT (PW 15). From the deposition of the said doctors i.e. PW 13 & PW 15, it is observed that both the doctors opined that the complainant had got injuries.

[10] Having heard the learned counsel appearing for the parties, this Court is of the opinion that ends of justice would be met, if the sentence as awarded by the learned Court below to the petitioner herein under Section 323 of IPC, be reduced to one month instead of six months. Accordingly, the sentence awarded to the petitioner is reduced to one month instead of six months rigorous imprisonment. He has also to pay a fine of Rs.1,000/-(one thousand) and in default to pay fine, there shall be simple imprisonment for 10 days. It is also made clear that the period of detention already undergone by the petitioner herein, if any, shall be set off. Petitioner is further directed to pay Rs.10,000/- to the complainant as she suffered injuries and incurred medical expenses for her treatment.

With the above observation and direction, the impugned order of the Court below stands modified to the extent as indicated above. Thus, the present petition is partly allowed and accordingly, the same is disposed of.

As a sequel, miscellaneous application(s), pending if any, shall stand closed.

JUDGE

Sabyasachi. G.

**SABYASACHI
GHOSH**

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