

**HIGH COURT OF TRIPURA
AGARTALA
Crl. A. No.17 of 2023**

Bhupendra Debbarma,
Son of Late Hemanta Debbarma,
Resident of – West Abhanga,
P.S - Salema, District- Dhalai Tripura, Age-40 years

-----Appellant

Versus

The State of Tripura

To be represented by the L'd Public Prosecutor,
High Court of Tripura, Agartala

-----Respondent

For Appellant(s)	:	Mr. Samarjit Bhattacharjee, Adv.
For Respondent(s)	:	Mr. S. Ghosh, Addl. P.P.
Date of hearing	:	02.09.2024
Date of delivery of Judgment & Order	:	07.09.2024
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This criminal appeal is preferred or directed against the judgment and order of conviction and sentence delivered by Learned Addl. Sessions Judge, Kamalpur, Dhalai on 27.07.2023 in connection with S.T.(T-I) No.19 of 2017. By the said judgment, the appellant has been sentenced to suffer R.I for 3 years and to pay fine of Rs.20,000/- in default, to suffer SI for further 3 months under Section 324 of IPC.

2. Heard Learned Counsel Mr. Samarjit Bhattacharjee for the appellant and also heard Learned Addl. P.P. Mr. S. Ghosh for the State-respondent.

3. In the case at hand, prosecution was set into motion on the basis of an FIR dated 16.12.2016 laid by the informant alleging inter alia that on 11.12.2016 at about 11 O' clock in the night her husband Rajani Kanta Debbarma when visited the house of Sashi Ranjan Debbarma of their locality for attending an invitation, that time, the accused Bhupendra Debbarma came suddenly at the courtyard of the house and gave strong blow over the chest of her husband by a knife in order to kill him in front of everyone. Her husband fell down on the ground with bleeding injury. No one was able to detain him as he had sharp knife along with him. Immediately, the eye witnesses brought the victim to Kulai Hospital for treatment from where he was referred to Agartala as his condition was critical. She further stated in the FIR that the accused person also threatened that if the victim informs the matter to police then the accused would make his condition serious. Further it was stated that the delay was caused due to engagement for treatment. So, the informant laid the FIR.

4. On receipt of FIR, O/C, Salema PS registered Salema PS case No.36 of 2016 under Section 326/307/506 of IPC and the case was endorsed to SI Ranabir Jamatia for investigation. However, on completion of investigation the IO laid charge-sheet against the appellant before the jurisdictional Court and

later on, this case was committed to the Court of Learned Addl. Sessions Judge, Kamalpur who after hearing both the sides and also on perusal of materials on record framed charge against the appellant under section 326/507/306 of IPC and the same was explained to the appellant in Bengali to which he pleaded not guilty and claim to be tried.

5. During trial, to substantiate the charge, prosecution has adduced in total 12 nos. of witnesses and also the prosecution tendered and relied upon some documents which were marked as exhibits in this case.

Prosecution witnesses:

- PW-1: Smt. Soma Debbarma**
- PW-2: Sri Sachi Ranjan Debbarma**
- PW-3: Sri Nalini Debbarma**
- PW-5: Sri Daliyan Debbarma**
- PW-6: Sri Rajani Kanta Debbarma**
- PW-7: Smt. Priya Bala Debbarma**
- PW-8: Smt. Alupi Debbarma**
- PW-9: Sri Tarani Jamatia**
- PW-10: Sri Prabir Debbarma**
- PW-11: Sri Janardhan Debbarma**
- PW-12: Dr. Bikash Debbarma**
- PW-13: Sri Ranabir Jamatia**

Prosecution Exhibits:

- Exbt.-1: Written ejahar bearing signature of PW-1**
- Exbt.-1/1: Signature of SI Jayanta Halder in endorsement portion of ejahar.**
- Exbt.-2: Signature of PW-3 in the seizure list.**
- Exbt.-3: Signature of PW 8 in the seizure list.**
- Exbt.-4/1: Signature of PW 10 in the seizure list.**
- Exbt.-4/2: Signature of PW 11 in the seizure list.**
- Exbt.-5/1: Signature of PW 12 in the seizure list.**
- Exbt.-6: Signature of SI Jayanta Halder in the printed FIR form.**
- Exbt.-7 & 8: Hand sketch map and index of PO identified by PW 13.**
- Exbt.-9: Seizure list bearing signature of PW 13.**

Exbt.-10: Seizure list bearing signature of PW 13.

Exbt.-11: Seizure list bearing signature of PW 13.

Material Objects:

MO-I: Knife.

MO-II: T-Shirt of Victim.

6. After conclusion of trial, Learned Court below found the appellant to be guilty and convicted him accordingly for which this present appeal has been preferred by the appellant.

Now here in this appeal, this Court is to decide as to whether the judgment and order of conviction and sentence delivered by Learned Court below suffers from any infirmities or not. As already stated, prosecution before the Learned Court below in total has adduced 12 nos. of witnesses. Now let us discuss the relevant portion of evidence on record adduced by the prosecution before the Learned Court below.

7. PW-1, Smt. Soma Debbarma is the informant of this case. She is also the wife of the victim. She stated that on 11.12.2016 at night her husband Rajani Kanta Debbarma went to the house of Sashi Ranjan Debbarma of their village to attend one invitation. In the said house, at around 10/10.30 pm an altercation took place between her husband and the accused Bhupendra on the issue of some monetary transaction. The villagers intervened and send back the accused to his house but after 10mins he again came back to the house of Sashi Ranjan Debbarma and attacked her husband with a knife. He gave a stab blow on the left chest of her husband and sustained bleeding injury. The incident took place in her presence. They

shifted him to the hospital at Kulai and on the following day morning, he was shifted to TMC, Hapania, Agartala wherein he was admitted upto 26.12.2016. She further stated that she accompanied her husband and stayed therein at Agartala and after few days she informed the matter in writing to O/C, Salema PS. She identified the ejahar laid by her which bears her signature and the same was marked as Exbt.-1.

During cross-examination, she stated that the house of Sashi Ranjan Debbarma is located at a distance of one furlong from her house. Witness Nalini Debbarma is her father. She further stated that her husband went to house of Sashi Ranjan Debbarma at around 8/8.30 pm when she was present in her house. She also stated that on that relevant point of time her husband was posted at Guwahati and her husband once took the accused to Guwahati for his engagement in the company where he used to work. Accused Bhupendra paid Rs.15,000/- to her husband for depositing the same in the company. They went to Kulai via Salema when they transported her injured husband to hospital but they did not enter in the Salema PS at that time. Witness volunteered that the condition of her husband was serious at that time. She further stated that her father Nalini Debbarma and her father-in-law Niralal Debbarma are the employees of the police department and the medical officer of Kulai referred her husband to AGMC and GBP Hospital but they shifted him to TMC, Hapania. Nothing more came out relevant from her cross-examination save and except denial.

However, to Court she deposed that she went to the house of Sashi Ranjan Debbarma at about 10 p.m.

8. PW-2, Sachi Ranjan Debbarma deposed that he know the accused. His house is situated at a distance of 1 km from his house. He also stated that he knew the informant Soma Debbarma and her husband Rajani Kanta Debbarma. On 11.12.2016 at night he invited the villagers namely Nibaran Debbarma, Mahesh Debbarma and Rajani Kanta Debbarma and some others. Accordingly, they came to his house on invitation. At around 9 pm accused Bhupendra came to his house and asked Rajani Kanta Debbarma to refund his money. That time, a quarrel took place and on their intervention accused Bhupendra left his house. This witness was declared as hostile by the prosecution.

During cross-examination, he stated that the other invitees left his house at about 9/9.30 pm.

9. PW-3, Sri Nalini Debbarma deposed that victim Rajani Kanta Debbarma is the husband of his daughter. The incident took place in the house of his adjacent neighbour namely Sashi Ranjan Debbarma. At around 11 pm he woke up on hearing hue and cry in the house of Sashi Ranjan Debbarma. Thereafter, he went to his house and came to know that accused Bhupendra Debbarma caused bleeding injury of his son-in-law with a knife and he was shifted to hospital at Kulai. During investigation police recovered one knife from the house of accused Bhupendra Debbarma and he put his signature on the seizure

list which was seized by the police officer in presence of him. The witness identified his signature on the seizure list which was marked as Exbt.2 on identification.

During cross-examination, he deposed that he did not report the incident to PS. Nothing more came out relevant.

10. PW-5, Daliyan Debbarma deposed that about one and half year back one day he visited the house of Sashi Ranjan Debbarma, who is the husband of his aunt(paternal). When he was entering into the house of Sashi Ranjan Debbarma, he saw a quarrel in between accused Bhupendra Debbarma and the victim Rajani Kanta Debbarma. That time, the accused Bhupendra Debbarma stabbed victim Rajani Kanta Debbarma with a dagger for which he sustained bleeding stab injury on the left side of his abdomen. They took him to the Dhalai District Hospital and the accused fled away.

During cross-examination, he stated that in the house of Sashi Ranjan Debbarma, Tushar Debbarma and Rajani Kanta Debbarma were also taking alcohol. He further admitted that Rajani Kanta Debbarma took Rs.15,000/- from the accused Bhupendra Debbarma for providing a job at Gauhati. He also heard that he took such money from other villagers for providing job and after taking alcohol he left the house of Sashi Ranjan Debbarma at about 8/9 pm. He heard the fact of incident at night. To Court, he further stated that the incident was not taken place in his presence and he heard it after coming from the house of Sashi Ranjan Debbarma.

11. PW-6, Rajani Kanta Debbarma is the victim. He deposed that about two years back at about 9/10 pm he was in the house of Sashi Ranjan Debbarma, who is his brother-in-law. In the said house besides him Daliyan Debbarma, Mahesh Debbarma, Sashi Ranjan Debbarma were present. That time, accused Bhupendra Debbarma came there and started quarrelling with him. On hearing quarrel, the villagers appeared therein. The villagers once sent him back to his house but again he came there and started quarrelling with him. On hearing hue and cry, his mother came to the spot. Accused assaulted his mother by fist and blows. On seeing the condition, he came forward to restrain him. At that time, accused stabbed him with a knife on his abdomen. He sustained bleeding injury on the left side of his abdomen. He was shifted to Dhalai District Hospital, Kulai. From the said Hospital, he was referred to Hapania Hospital and admitted therein for 18/19 days. Accused Bhupendra Debbarma fled from the spot.

During cross-examination, he stated that accused paid him Rs.15,000/- for the purpose of a job which he deposited in the company. He also took such money from 3/4 villagers for providing job in his company. He was confronted with the statement that he stated to IO that at the place of occurrence his mother came on hearing hue and cry when accused assaulted his mother with fist and blows but that statement was not found in the statement of witness recorded by IO under Section 161 of Cr.P.C. Nothing more came out relevant.

12. PW-7 is the mother of the victim. She deposed that on 11.12.2016 at about 10/10.30 pm her son Rajani Kanta Debbarma was in the house of Sashi Ranjan Debbarma. His house is situated at a short distance from his house. Sashi Ranjan Debbarma gave her information over phone that accused was making quarrel with her son and he asked her to come to his residence and accordingly she went to his house. When she asked as to why he was making quarrel with her son, that time, he gave her a kick. Her son came forward to restrain the accused. At that time, the accused assaulted her son with a knife. He sustained bleeding injury on the left side of abdomen. They took him to the Dhalai District Hospital, Kulai and from the said hospital, the doctor referred him to Hapania Hospital wherein he was admitted for a period of 15/16 days.

During cross-examination, she was confronted with the statement that she stated to IO that Sashi Ranjan Debbarma gave her information over phone about the quarrel which was making by the accused with her son and he asked her to come and accordingly she came to his residence and when she asked as to why he was making quarrel with his son he gave her a kick. But on drawing attention by the defence, such portion of statement was not found in her statement recorded by IO under Section 161 of Cr.P.C. Nothing more came out relevant from her cross-examination.

13. PW-8, Smt. Alupi Debbarma deposed that around one year back, she was present when blood sample was taken from Rajani Kanta Debbarma by Dr. Bikash Debbarma in connection with this case and the same was handed over to IO. She put her signature on the seizure list prepared in connection with this case and identified her signature marked as Exbt.-3.

During cross-examination, she was declined to cross-examination by the appellant.

14. PW-9, Tarani Jamatia deposed that on 16.12.2016 he was posted at Salema PS and he completed the investigation and submitted charge-sheet after another IO initiated the investigation. He further stated that he submitted charge-sheet against Bhupendra Debbarma on 30.04.2017 and before that, major part of investigation was conducted by SI Ranabir Jamatia and said Ranabir Jamatia was transferred. So, this case was entrusted to him for completion of investigation.

During cross-examination, he stated that in course of submitting charge-sheet, he specifically mentioned that the SFSL report and the injury report were not received and a supplementary charge-sheet may be submitted after receipt of the same. Nothing more came out relevant.

15. PW-10, Prabir Debbarma deposed that he knew the informant Soma Debbarma as well as accused Bhupendra Debbarma as they are his neighbour. He also know the victim Rajani Kanta Debbarma who is the husband of the complainant Soma Debbarma. Darogababu did not seize anything in his

presence and he took his signature only. He identified his signature on the seizure list dated 29.12.2016 which was marked as Exbt.-4/1. He could not say anything about the prosecution case. He was declined to cross-examination by the accused-appellant.

16. PW-11, Janardhan Debbarma deposed that he knew the informant Soma Debbarma as well as accused Bhupendra Debbarma as they are his neighbour. About two years back he heard that there was a scuffle between Rajani Kanta Debbarma and Bhupendra Debbarma. At the request of Darogababu, he put his signature on a paper. He identified his signature on the seizure list dated 16.12.2016 which was marked as Exbt.-4/2. He could not say anything about the prosecution case.

During cross-examination, nothing came out relevant.

17. PW-12, Dr. Bikash Debbarma deposed that on 08.01.2017 he was posted as MO at Salema PHC. On that day he had collected blood sample of Rajani Kanta Debbarma in connection with Salema PS case No.30 of 2016 and accordingly darogababu seized the same and he put his signature on the seizure list which was marked as Exbt.-5/1.

During cross-examination, he stated that he personally do not know Rajani Kanta Debbarma.

18. PW-13 is the first IO who conducted the major part of investigation. He deposed that on 16.12.2016 he was posted as SI of police at Salema PS. On that day, this case was endorsed to him for investigation. SI Jayanta Halder filled up the printed

FIR form and he identified the signature of Jayanta Halder in the printed FIR form and endorsement in the ejahar marked Exbt.-6 and 1/1 respectively. He visited PO but did not prepare hand sketch map due to night and darkness at PO and on the following day he visited PO and prepared hand sketch map with index and identified the same marked as Exbt.7 and 8. He further stated that during investigation accused made disclosure statement in presence of DCM, Kamalpur and on the pointing out memorandum of accused they recovered weapon of offence i.e. one long knife of 20.6cm in length having green plastic handle length(10cm x 10.6cm) from just adjacent to the house of accused.

Thereafter, on seizure he prepared seizure list in presence of witnesses. Witness identified the seizure list marked as Exbt.-9. He also identified the seized knife produced before the Court marked as Exbt.-MO-I. During investigation he also seized one black colour T-shirt of victim in presence of witnesses. Witness identified the said seizure list marked as Exbt.-10. He identified the black colour T-shirt marked as Exbt.-MO-II. He also seized the blood sample of the victim collected by Dr. Bikash Debbarma and identified the seizure list marked as Exbt.-11. He further stated that he sent the seized articles i.e. alat to SFSL for analysis and report. He further stated that during investigation he collected the injury report from District Hospital, Kulai. He further stated that on 17.12.2016 he examined and recorded the statement of Sashi Ranjan

Debbarma when he stated to him that about 11 pm Bhupendra Debbarma again came and started quarrelling and at that time he attacked Rajani Kanta Debbarma by a knife upon which Rajani Kanta Debbarma fell down on surface having heavy bleeding and also stated that the incident occurred at his courtyard.

During cross-examination, the defence denied the aforesaid portion of statement of the said witness who was declared hostile by the prosecution. Again, he stated that he did not find any blood stain at PO. He further stated that the witness Rajani Kanta Debbarma did not state to him that at the place of occurrence her mother came on hearing hue and cry and accused assaulted his mother by fist and blows. He further stated that witness Priyabala Debbarma also did not state to him that Sashi Ranjan Debbarma gave information and the accused was making quarrel with her son and he asked her to come to his house and on his information she came to his house and when she asked accused as to why accused was making quarrel with her son then he gave her a kick.

These are the sum and substances of the evidence on record of the prosecution to substantiate the charge.

19. In course of hearing of argument, Learned Counsel for the appellant drawn the attention of the Court that in this case, the evidence of prosecution suffers from various infirmities but the Learned Court below failed to appreciate the evidence on record properly and convicted the appellant for which

interference of the Court is required and he urged for allowing the appeal by setting aside the judgment and order of conviction delivered by Learned Court below. Learned Counsel first of all drawn the attention of the Court that in this case different witnesses give different versions. According to Learned Counsel, somebody stated that the appellant caused knife blow to the chest of the victim but the victim stated that the appellant dealt blow to the abdomen of the victim by a knife. But surprisingly in this case, no injury report of the victim was proved by the prosecution before the Learned Court below. It was further submitted that even no report of SFSL was proved in this case and furthermore, there was no explanation from the side of the prosecution in course of hearing of argument regarding contradictory statements. More so, regarding actual time of occurrence of offence different witnesses give different versions which the prosecution also has failed to explain before the Learned Trial Court below. Even the independent witnesses also did not support the version of the victim. But the Learned Trial Court below without considering those loop holes has found the appellant to be guilty. So, Learned Counsel in summing up urged for setting aside the judgment.

20. On the other hand, Learned Addl. P.P. taking part in the hearing submitted that admittedly in this case the prosecution could not prove the injury report of the victim but from the evidence of the victim and other independent public witnesses, it was very much clear that on the alleged day of incident, the

appellant-accused committed the offence. So, in summing up Learned Addl. P.P submitted before the Court that the Learned Court below after considering the evidence on record rightly and reasonably found the appellant to be guilty and convicted him accordingly. So, Learned Counsel urged for dismissal of this appeal by upholding the judgment and order of conviction and sentence delivered by Learned Trial Court.

21. Learned Addl. P.P., Mr. S. Ghosh in support of his contention relied upon few citations. In **2023 SCC OnLine SC 1321** of **Rameshji Amarsing Thakor v. State of Gujarat** dated 13.09.2023 wherein Hon'ble the Apex Court in para Nos.8 and 9 observed as under:

"8. On the aspect of discrepancies, it has been held by this Court in the case of *State of H.P. v. Lekh Raj.*, reported in [(2000) 1 SCC 247]:

"7. In support of the impugned judgment the learned counsel appearing for the respondents vainly attempted to point out some discrepancies in the statement of the prosecutrix and other witnesses for discrediting the prosecution version. Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. The normal course of the human conduct would be that while narrating a particular incident there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Parrot-like statements are disfavoured by the courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness was making the statement. This Court in *Ousu Varghese v. State of Kerala* [(1974) 3 SCC 767 : 1974 SCC (Cri) 243] held that minor variations in the accounts of the witnesses are often the hallmark of the truth of their testimony. In *Jagdish v. State of M.P.* [1981 Supp SCC 40 : 1981 SCC (Cri) 676] this Court held that when the discrepancies were comparatively of a minor character and did

not go to the root of the prosecution story, they need not be given undue importance. Mere congruity or consistency is not the sole test of truth in the depositions. This Court again in *State of Rajasthan v. Kalki* [(1981) 2 SCC 752 : 1981 SCC (Cri) 593] held that in the depositions of witnesses there are always normal discrepancies, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal and not expected of a normal person.

8. Referring to and relying upon the earlier judgments of this Court in *State of U.P. v. M.K. Anthony* [(1985) 1 SCC 505 : 1985 SCC (Cri) 105 : AIR 1985 SC 48] , *Tahsildar Singh v. State of U.P.* [AIR 1959 SC 1012 : 1959 Supp (2) SCR 875] , *Appabhai v. State of Gujarat* [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : JT (1988) 1 SC 249] and *Rammi v. State of M.P.* [(1999) 8 SCC 649 : JT (1999) 7 SC 247] , this Court in a recent case *Leela Ram v. State of Haryana* [(1999) 9 SCC 525: JT (1999) 8 SC 274] held:

"There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence....

The court shall have to bear in mind that different witnesses react differently under different situations : whereas some become speechless, some start wailing while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within a set pattern is unproductive and a pedantic exercise."

9. In our opinion the discrepancies pointed out by the appellant are minor ones. An eyewitness to a gruesome killing cannot in deposition narrate blow by blow account of the knife strikes inflicted on the

deceased like in a screenplay. We find nothing which could establish that the eyewitness or post-occurrence witnesses were not present at the place of offence or PW2's description of the incidence was imaginary. On the other hand, we find sufficient corroborations of the eyewitness account with the depositions of post-occurrence witnesses of fact, so far as narration of the sequence of events subsequent to inflicting of injuries on the deceased are concerned. As regards the dying declaration, PW3, PW4 and PW5 broadly have given the same narration and there is no reason to disbelieve them. In the judgment of this Court reported in *Darbara Singh v. State of Punjab*, [(2012) 10 SCC 476], this Court has given greater importance to ocular evidence over opinion of the medical expert. This principle applies to the case before us. Ms. Deepanwita Priyanka, learned counsel appearing for the State has relied on judgment of this Court in the case of *Anvaruddin v. Shakoor* reported in [1990 (3) SCC 266] on the same point. We find no reason to interfere with the judgment under appeal. It has been held in the case of *Gurbachan Singh v. Satpal Singh and Others*, reported in [(1990) 1 SCC 445] that exaggerated devotion to rule of benefit of doubt must not nurture fanciful doubts letting guilty escape is not doing justice, according to law. In this appeal, we follow the same course. It is a fact that two other accused persons, against whom there were allegations of holding the deceased at the time when the appellant was striking knife blows on the deceased, have not been convicted. They were given benefit of doubt by the High Court, while the High Court opined that presence of the appellant was proved beyond reasonable doubt. As there is no appeal by the state against the said judgment as regards the other two co-accused persons, we refrain from making any comment on that aspect of the High Court judgment."

Referring the same, Learned Addl. P.P. submitted that for minor discrepancies there is no scope to disbelieve the prosecution story.

22. In *Lakshman Singh v. State of Bihar(Now Jharkhand)* dated 23.07.2021 reported in (2021) 9 SCC 191, wherein in para No.11 Hon'ble Apex Court observed as under:

"11. Now so far as the submission on behalf of the appellant-accused that all the appellants were alleged to have been armed with lathis and so far as PW8 is concerned, no injury report is forthcoming and/or brought on record and therefore they cannot be convicted for the offence under Section 323 IPC is concerned, at the outset, it is required to be noted that PW 8 in his examination-in-chief/deposition has specifically stated that after he sustained injuries, treatment was provided at Government Hospital, Paatan. He has further stated in the cross-

examination on behalf of all the accused persons except accused Dinanath Singh that he sustained 2-3 blows of truncheons. He has also stated that he does not exactly remember that how many blows he suffered. According to him, he first went to Police Station, Paatan along with the SHO of Police Station, Paatan, where his statement was recorded and thereafter the SHO sent him to Paatan Hospital for treatment. Thus, he was attacked by the accused persons by lathis/sticks and he sustained injuries and was treated at Government Hospital, Paatan has been established and proved. It may be that there might not be any serious injuries and/or visible injuries, the hospital might not have issued the injury report. However, production of an injury report for the offence under Section 323 IPC is not a sine qua non for establishing the case for the offence under Section 323 IPC. Section 323 IPC is a punishable section for voluntarily causing hurt. "Hurt" is defined under Section 319 IPC. As per Section 319 IPC, whoever causes bodily pain, disease or infirmity to any person is said to cause "hurt". Therefore, even causing bodily pain can be said to be causing "hurt". Therefore, in the facts and circumstances of the case, no error has been committed by the courts below for convicting the accused under Section 323 IPC."

Referring the same, Learned Counsel further drawn the attention of this Court that in absence of injury report of the victim, there is also scope for awarding conviction to an accused. So, according to Learned Addl. P.P, Learned Court below in this case rightly found the appellant to be guilty and convicted him accordingly.

23. Learned Addl. P.P. further referred few more citations. In **State of U.P v. Krishna Gopal and anr.** dated 12.08.1988 reported in **(1988) 4 SCC 302** wherein in para No.25 Hon'ble Apex Court observed as under:

"25. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to 'proof' is an exercise particular to each case. Referring to the interdependence of evidence and the confirmation of one piece of evidence by another a learned author says:

The simple multiplication rule does not apply if the separate pieces of evidence are

dependent. Two events are dependent when they tend to occur together, and the evidence of such events may also be said to be dependent. In a criminal case, different pieces of evidence directed to establishing that the defendant did the prohibited act with the specified state of mind are generally dependent. A juror may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from the fact that the defendant fled from justice. But since it is generally guilty rather than innocent people who make confessions, and guilty rather than innocent people who run away, the two doubts are not to be multiplied together. The one piece of evidence may confirm the other.

Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over-emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case."

In **(2009) 13 SCC 542** of **State of U.P. v. Hari Chand** dated 29.04.2009 wherein in para No.13, Hon'ble the Apex Court observed as under:

"13. There was no reason for the High Court to discard the credible, cogent and trustworthy evidence of the eyewitnesses. This was certainly not a case where medical evidence was at a variance with the ocular evidence. The evidence of the eyewitnesses regarding injuries caused by the firearms is amply corroborated by the evidence of the doctor who found four firearms' wounds. In any event unless the oral evidence is totally irreconcilable with the medical evidence, it has primacy."

In **(1983) 2 SCC 174** of **Solanki Chimanbhai Ukabhai v. State of Gujarat** dated 22.02.1983 wherein in para No.13, Hon'ble the Apex Court observed as under:

"13. Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye witnesses. Unless, however the medical evidence in its turn goes so far that it completely rules out all

possibilities whatsoever of injuries taking place in the manner alleged by eye-witnesses, the testimony of the eye-witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence."

Referring the same, Learned Addl. P.P. further submitted that the aforesaid citations are very much relevant for the decision of this case.

24. I have heard arguments of both the sides and gone through the evidence on record of the prosecution adduced before the Learned Court below. I have also perused all the citations as referred by Learned Counsel for the state-respondent but those are distinguishable in facts as such I do not find any scope to rely upon those citations in deciding this present appeal. Now, after going through the evidence on record of the prosecution, it appears that although initially the Learned Court below considering the materials on record framed charge against the appellant under Section 326/307/506 of IPC but after recording evidence and also at the time of delivery of judgment, Learned Court below did not find any materials against the appellant under Section 326/307/506 of IPC. So, Learned Court below relying upon the provision of Section 222 of Cr.P.C. found the appellant to be guilty and convicted him under Section 324 of IPC. Admittedly, in this case prosecution could not prove the injury report of the victim. So, let us examine as to whether in absence of injury report of the victim there was any scope on the part of the Learned Court below to found the appellant to be guilty.

25. To substantiate the charge as already stated, prosecution has adduced in total 12 nos. of witnesses. PW-1 is the informant of the case. She in course of examination-in-chief stated that at the time of incident she was present when the accused-appellant dealt stab blow on the left chest of her husband and if we rely upon her evidence, it appears that the alleged incident took place at around 10/10.30 pm. During cross-examination, she stated that her husband came to residence of Sashi Ranjan Debbarma at about 8/8.30 p.m. when she was present in her house. Now, if we go through the evidence of PW-2, it appears that the said Sashi Ranjan Debbarma did not in any manner support the version of prosecution regarding causing of stab injury to the victim by the appellant. Although he was declared hostile by the prosecution but from his evidence prosecution could not derive any benefit in support of the prosecution case.

26. PW-3, Nalini Debbarma and PW-5, Daliyan Debbarma also tried to support the version of the victim but after going through the evidence on record of said witnesses, it appears that just at the time of incident they were not present to the PO because PW-3 specifically stated that at around 11 p.m. he woke up on hearing hue and cry and thereafter he came to the residence of Sashi Ranjan Debbarma when he could hear the fact of causing bleeding injury upon his son-in-law by the appellant. Similarly, PW-5 Daliyan Debbarma who according to victim was present to the PO at the time of alleged occurrence

of offence during his cross-examination, being asked by the Court stated that the incident was not taken place in his presence and he heard the incident after coming to the house of Sashi Ranjan Debbarma. So, virtually there is no scope to place any reliance upon the evidence of said PWs-3 and 5.

27. Now, if we go through the evidence of PW-6, Rajani Kanta Debbarma is the victim, he in course of his examination stated that the appellant caused stab injury to his left abdomen but his wife i.e. PW-1 stated that the accused caused stab injury to her husband to the left side of his chest. Prosecution in course of hearing of argument also failed to explain this before the Court.

28. More so, PW-6 in course of his examination-in-chief stated that at that relevant point of time in the house of Sashi Ranjan Debbarma, Daniyal Debbarma, Mahesh Debbarma were present but surprisingly Sashi Ranjan Debbarma did support the version of the victim. Even Daniyal Debbarma i.e. PW-5 although tried to support the version of the victim PW-6 but he in course of his examination specifically stated that the incident did not occur in his presence and he came to know the incident after coming from the house of Sashi Ranjan Debbarma after the incident. So, those two witnesses i.e. Sashi Ranjan Debbarma did not support the case of the victim nor Daniyal Debbarma independent witness according to prosecution also did not support the case of the victim because he may be treated as hearsay witness.

29. Another thing is that from the evidence of PW-6, it appears that on hearing the information of quarrel his mother came when appellant assaulted his mother by fist and blows but surprisingly, PW-1 i.e. the informant nowhere admitted this fact. Even from her evidence also, it is not clear as to whether her mother-in-law was present to the PO on that relevant point of time or not.

30. Now, if we go through the evidence of Priyabala Debbarma i.e. the mother of the victim, she stated that when she came to the PO, that time the accused gave a kick to her and when her son came forward to restrain, that time, accused assaulted with a knife. But during cross-examination, the witness deviated from her earlier statement made to IO regarding dealing of kick by the appellant i.e. that was the improved version of evidence. There was no explanation in this regard from the side of the prosecution.

31. PW-8, Alupi Debbarma just put her signature on the seizure list. He did not support the case of the prosecution. PW-9 laid charge-sheet against the accused-appellant. PW-10, Prabir Debbarma just simply put his signature on the seizure list. He also could not say anything about the case of the prosecution nor could say anything about the seizure. Similarly, PW-11, Janardhan Debbarma simply put his signature on the seizure list. He could not say anything about the case of the prosecution. PW-12, Dr. Bikash Debbarma identified his signature on the seizure list.

32. Now, PW-13 is the IO who conducted major part of investigation against the appellant. As already stated prosecution in this case failed to prove the injury report of the victim and could not produce and prove the report of SFSL. There was no explanation in this regard from the side of the prosecution. PW-13 is the first IO who in course of his examination-in-chief stated that on the basis of disclosure statement the alleged weapon of offence was recovered which was made in presence of DCM, Kamalpur but surprisingly prosecution also failed to produce said DCM before the Court for his examination to substantiate that portion of evidence of the IO.

33. Now, for the sake of convenience, I would like to refer herein below the relevant provision of Section 324 of IPC which provides as under:

324. Voluntarily causing hurt by dangerous weapons or means.- Whoever, except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Here in the given case, Learned Trial Court below found the appellant to be guilty under Section 324 of IPC and the allegation of the prosecution was that the appellant caused knife injury to the victim which may be treated as a sharp cutting weapon but surprisingly neither there is any SFSL report

nor any injury report of the victim is produced and proved. Even prosecution also failed to satisfy the Learned Court below that Exbt.-MO-I is the said weapon on the basis of which the appellant committed the offence on the alleged day.

34. Thus, after going through the evidence on record, it appears that firstly there are lot of contradictions on the evidence on record of the prosecution witnesses which the Learned Court below failed to appreciate at the time of delivery of judgment because the informant stated that accused dealt blow on the left side of the chest of the victim but victim and other witnesses stated that the accused dealt blow by knife on the left side of abdomen. But in absence of medical injury report of the victim, it is hard to come to the conclusion that actually where the injury was caused. Secondly, independent witnesses of the prosecution i.e. Sashi Ranjan Debbarma and Daliyan Debbarma also did not support the version of the victim. It was not the case of the prosecution that the victim himself was the only eye-witness of this case but since according to prosecution in presence of so many witnesses the incident took place. So, we are to consider not only the evidence of the victim but also to consider the other evidence on record of the witnesses who according to prosecution were present to the PO at the time of alleged occurrence of offence. More so, prosecution has failed to produce the DCM in presence of whom according to prosecution the alleged weapon of offence was seized by IO. Even as already stated there was no evidence

on record of SFSL that this MO-I was used to commit the crime by the appellant on that relevant point of time.

35. Situated thus, on the face of evidence on record, it appears that the prosecution before the Learned Court below has failed to prove the charge beyond all reasonable doubt against the appellant but the Learned Court below failed to appreciate the evidence on record properly at the time of delivery of judgment. Since in course of hearing of argument Learned Addl. PP submitted before the Court that the evidence of the victim was unshaken by the defence, in this regard, it is submitted that for inefficient cross-examination of the prosecution witnesses, it cannot be said that prosecution is not under an obligation to prove the charge beyond reasonable doubt against the appellant. Here in the given case, the infirmities as indicated above were failed to explain by the prosecution before the Court at the time of hearing of argument. So, on the face of evidence on record in my considered view, the judgment and order of conviction and sentence cannot be sustained against the appellant. The accused-appellant is hereby liable to be acquitted of benefit of doubt in this case which I hereby do.

36. However, before conclusion of the judgment it is necessary to be mentioned here that in this case PW-2 was declared hostile by the prosecution but after perusal of the evidence on record, it appears that the evidence of the said witness was not properly recorded in view of the provision

provided under the Evidence Act because the relevant portion of evidences which were confronted by the prosecution from the evidence of said witness was not marked as Exhibit by the Learned Court below for which there is also no scope to place any reliance upon that portion of evidence of the witness PW-2. In recording the evidence of said witness, the Learned Court below ought to have follow the provision of Section 154 and 145 of the Evidence Act. In this regard, Hon'ble the Supreme Court of India in **Anees v. State Govt. of NCT** bearing case No.Crl. A. No.437 of 2015 reported in **2024 SCC OnLine Sc 757** in para Nos.62, 63, 64, 65 and 66 observed as under:

"iv. Cross-examination by the public prosecutor of a hostile witness

62. In the case at hand, Shaheena (PW-3) was the most important witness for the prosecution, being the solitary eye witness to the incident. Shaheena (PW-3) at the relevant point of time was just five years olds. Her childhood might have been very disturbed on account of the strained relations of her parents. The unfortunate incident must have had a lasting effect on her. However, when she entered the witness box, she decided to resile from her previous statement. Had she deposed as stated by her in her police statement then, probably, the prosecution would not have felt the need to invoke Section 106 of the Evidence Act. There could be innumerable reasons for a witness to resile from his/her police statement and turn hostile. Here is a case in which a five-year-old daughter might have resiled thinking that having lost her mother, the father was the only person who may take care of her and bring her up. However, why she turned hostile is not important. What is important is the role of the public prosecutor after a prime witness, more particularly a child witness of tender age, turns hostile in a murder trial. When any prosecution witness turns hostile and the public prosecutor seeks permission of the trial court to cross-examine such witness then that witness is like any other witness. The witness no longer remains the prosecution witness.

63. Section 162 Cr.P.C. bars the use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated therein. The statement made by a witness before the police under Section 161(1) Cr.P.C. can be used only for the purpose of contradicting such witness on what he has stated at

the trial as laid down in the proviso to Section 162(1) Cr.P.C. The statements under Section 161 Cr.P.C. recorded during the investigation are not substantive pieces of evidence but can be used primarily for the limited purpose: (i) of contradicting such witness by an accused under Section 145 of the Evidence Act; (ii) the contradiction of such witness also by the prosecution but with the leave of the Court; and (iii) the re-examination of the witness if necessary.

64. The court cannot *suo motu* make use of statements to police not proved and ask questions with reference to them which are inconsistent with the testimony of the witness in the court. The words '*if duly proved*' used in Section 162 Cr.P.C. clearly show that the record of the statement of witnesses cannot be admitted in evidence straightaway, nor can be looked into, but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the Investigating Officer. The statement before the Investigating Officer can be used for contradiction but only after strict compliance with Section 145 of the Evidence Act, that is, by drawing attention to the parts intended for contradiction.

65. Section 145 of the Evidence Act reads as under:

"145. Cross-examination as to previous statements in writing.-A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

66. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need of further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter, when the Investigating Officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the Investigating Officer who, again, by referring to the police

statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot *suo motu* make use of statements to police not proved in compliance with Section 145 of the Evidence Act, that is, by drawing attention to the parts intended for contradiction.”[See: *V. K. Mishra v. State of Uttarakhand* : (2015) 9 SCC 588]

From the aforesaid principles of law laid down by the Hon’ble Apex Court, it appears that in this case the Learned Trial Court at the time of recording evidence of PW-2 who was declared as hostile by the prosecution did not mark the relevant portions as exhibits to be confirmed by IO from which it appears that the evidence of said witness was not duly recorded and proved in accordance with the relevant provisions of the Evidence Act. All the Sub-ordinate Courts of the State at the time of recording evidence of hostile witness shall follow the aforesaid direction of the Hon’ble Apex Court of India in letter and spirit.

Further, in this case admittedly, the prosecution has failed to prove the injury report of the victim as already stated but surprisingly there was no effort from the side of prosecution to prove the said injury report before the Court during trial which was lying with the record. Even no report of SFSL was collected and procured by IO and placed on record at the time of filing of charge-sheet. So, it appears that there was negligence on the part of Investigating Officer to deal with the matter properly before filing of the charge-sheet or even thereafter also. So, Learned P.P., High Court of Tripura be

asked to take up the matter with the concerned Learned Addl. P.P to be more vigilant in dealing with criminal case before the concerned Court in future.

37. In the result, the appeal filed by the appellant is hereby allowed. The judgment and order of conviction and sentence dated 27.07.2023 delivered by Learned Addl. Sessions Judge, Kamalpur, Dhalai on 27.07.2023 in connection with S.T.(T-I) No.19 of 2017 is hereby set aside. The appellant is hereby acquitted from the charge levelled against him on benefit of doubt and he is set at liberty. His surety is also stands discharged from the liability of bail bond.

A copy of this judgment be communicated to Learned P.P., High Court of Tripura for information.

Registrar(Judl.) be asked to circulate the judgment to all the Learned Judicial Officers of the State through the Learned District & Sessions Judges of the respective districts.

Send down the LCR along with a copy of judgment.

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

JUDGE