

**HIGH COURT OF TRIPURA
AGARTALA**

CrL.A(J) 40 of 2023

**Shri Gayajoy Tripura
S/o Late Brajendra Tripura
Of village- Bidhya Kumar Roaja Para, Thalcherra
PS- Chawmanu
District- Dhalai, Tripura**

-----Convict Appellant(s)

Versus

The State of Tripura

---Respondent(s)

For Appellant (s)	:	Mr. S. Sarkar, Sr. Advocate. Ms. V. Poddar, Advocate
For Respondent(s)	:	Mr. Raju Datta, PP.
Date of hearing and date of judgment and order	:	25.09.2024
Whether fit for reporting	:	No

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Judgment & Order (Oral)

T.Amarnath Goud, J

Heard Mr. S. Sarkar, learned senior counsel appearing for the appellant also
heard Mr. Raju Datta, learned PP appearing for the state-respondent.

[2] This is an appeal under section 374 of the Code of Criminal Procedure,
1973 against the judgment and order of conviction and sentence dated 10.08.2022 passed
by the Ld. Sessions Judge, Dhalai Judicial District, Ambassa, in connection with Case
No. ST (Type-1) 09 of 2021 convicting the appellant to suffer rigorous imprisonment for
life for the commission of offence punishable under Section 302 of the Indian Penal Code
and also liable to pay a fine of Rs. 10,000/- (Rupees Ten Thousand) only for the said
offence and in default of payment of such fine he is liable to undergo rigorous
imprisonment for a further period of 6 (Six) months. And also to suffer rigorous
imprisonment for 1 (one) year for the commission of offence punishable under section

448 of Indian Penal Code and also liable to pay a fine of Rs. 1,000/- (Rupees One thousand) only for the said offence and in default of payment of such fine he is liable to undergo rigorous imprisonment for a further period of 2 (Two) months.

[3] The factual backdrop of this case is that one Shri Ashala Tripura, Son of Late Brihala Tripura of Bidya Kumar Rowaja Para, PS- Chawmanu, District- Dhalai lodged an written Ejahar with the officer-in-charge of Chawmanu Police Station to the effect that on 12.03.2020 at about 1300 hours accused Gayajoy Tripura, Son of Late Brajendra Tripura of Bidhya Kumar Rowaja Para, PS- Chawmanu, District- Dhalai, Tripura entered into the house of one Smt. Rangabati Tripura and started to touch her inappropriately and molested her and on seeing the incident deceased Bishendra Tripura (son of complainant) warned and prevented the accused Gayajoy Tripura from doing so and over this incident a hot altercation took place in between the accused Gayajoy Tripura and the deceased Bishendra Tripura. At that moment, the accused with intend to commit murder abruptly assaulted the deceased by a spade. As a result, the deceased received severe injury on his head and other parts of his body and expired at the spot and the accused fled away from the spot. Thereafter, the dead body of deceased Bishendra Tripura was shifted to Chawmanu CHC with the help of police, TSR and local villagers.

[4] On receipt of the written ejahar of the complainant Ashala Tripura, Shri Parikshit Debbarma (Sub-Inspector of Police) being the officer-in-charge of Chawmanu Police Station registered Chawmanu Police Station case No. 2020 CMN 003, dated 12.03.2020 for the commission of offence punishable under Section 448/354/302 of the Indian Penal Code (hereinafter referred as IPC) against the accused Gayajoy Tripura and endorsed the case for investigation to Shri Subhra Dewan, Sub-Inspector of Police.

[5] During investigation before registration of the case the Investigating Officer received an information on 12.03.2020 at about 1450 hours from Thalcherra TSR post that an incident took place at Bidhya Kumar Rowaja Para in between two Tripuri

person and accordingly, Investigating Officer along with other PS Staff went to the place of occurrence.

[6] During investigation the Investigating Officer visited the place of occurrence and prepared hand sketch map of the place of occurrence and index. Investigating officer also examined the available witnesses and recorded their statement under section 161 of Cr.P.C, arranged for recording the statement of eye witnesses under 198/22 section 164(5) of Cr.P.C. and conducted raid to arrest the accused Gayajoy Tripura and arrested the accused.

[7] Thereafter, the accused person was examined under section 313 of Cr.P.C. with reference to the incriminating circumstances which were elicited from the evidence on record and the incriminating evidence was read over and explained to the accused person in Bengali language in open court to which he denied the of the prosecution evidence claiming himself to be innocent and also denied to adduce any witness on his behalf.

[8] After hearing both sides, the learned Court below delivered the judgment and order of conviction and sentence in the following manner:

7. Thus, this court further sentenced the convict Shri Gayajoy Tripura, Son of Shri Brajendra Tripura of Bidhya Kumar Roaja Para, Thalcherra, PS- Chawmanu, District- Dhalai, Tripura to suffer rigorous imprisonment for 1 (one) year for the commission of offence punishable under Section 448 of the Indian Penal Code and also liable to pay a fine of Rs. 1,000/- (Rupees One thousand) only for the said offence and in default of payment of such fine he is liable to undergo rigorous imprisonment for a further period of 2 (Two) months.

8. This court also sentenced the convict Shri Gayajoy Tripura, Son of Shri Brajendra Tripura of Bidhya Kumar Roaja Para, PS- Chawmanu, District- Dhalai, Tripura to suffer ge, rigorous imprisonment for life for the commission of offence punishable under Section 302 of the Indian Penal Code and also liable to pay a fine of Rs.10,000/- (Rupees Ten Thousand) only for the said offence ad in default of payment of such fine he is liable to undergo rigorous imprisonment for a further period of 6 (six) months.

[9] Being aggrieved by and dissatisfied with the judgment and order of conviction, the present appeal has been preferred by the appellant.

[10] It is contended by the counsel for the appellant that there are material discrepancies between the statements of the witnesses, yet this fact was not at all considered by the Ld. Sessions Court below and hence the order of conviction and sentence is liable to be set-aside/quashed. It is further contended by the learned senior counsel that only on account of unfortunate death, liability could not be fastened upon the appellant without any admissible and legal evidence. The prosecution has tried to connect the appellant in crime in question without any eye-witnesses and it is a false and concocted story implicating the name of the convicted person but Ld. Trial court below did not consider this aspect and as such the impugned judgment and order of conviction and sentence is liable to be set aside. Moreover, the prosecution failed to prove the circumstances. Even the circumstances could not form a complete chain for drawing inference that it was the accused person who killed the deceased. The Ld. Trial Court failed to consider this aspect for which the judgment and order is liable to be set aside.

[11] In course of his submission, it is also submitted by the learned senior counsel for the appellant that the Ld. Trial Court below also ought to have appreciated and considered the judgment relied upon from the side of the convict appellant, which was passed by the Hon'ble Apex Court, but the Ld. Trial Court below did not take the said judgment into consideration at the time of passing the impugned judgment and order of sentence.

[12] On the other side, Mr. Raju Datta, learned PP appearing for the state-respondent has vehemently opposed such statement and contended before this court that the impugned order as passed by the learned court below is just and proper and further prayed to dismiss the appeal.

[13] Having perused the record and also having considered by the submission as advanced by the counsel for the parties, this Court is of the opinion that the learned counsel defending the case of the convict-appellant before the court below could not

contest the matter covering all aspects. A bare reading of the impugned judgment shows that the learned counsel for the convict appellant seemed to have given only blunt suggestions before the trial court. This Court is not inclined to hold that the convict-appellant is not guilty of the crime but when this court is approached by any convict appellant in any criminal case, it is not just the duty of this Court to uphold the decision of the learned court below by putting him behind the bar or punish him severely at the same time it is to be seen whether he was given appropriate assistance during the trial to prove his innocence. Stating thus, this court is of the view that in order to meet proper ends of justice, the matter is remanded back to the learned court below for fresh trial. Meanwhile, the accused convict shall continue to be in jail till the matter is decided by the learned court below after retrial. If the legal services authority deems fit, another legal aid counsel be provided to the convict appellant to contest the case on his behalf in place of previous legal aid counsel. It is made clear that the convict appellant be given adequate opportunity to adduce any document, evidence etc to prove his innocence. If after the fresh trial, the convict appellant fails to prove his case, the learned court shall pass order in accordance with law. The said exercise for retrial shall be done on or before 31.03.2025.

[14] With the above observation and direction, the present appeal stands disposed of setting aside the impugned order dated 10.08.2022 passed by the Ld. Sessions Judge, Dhalai Judicial District, Ambassa, in connection with Case No. ST (Type-1) 09 of 2021.

B.Palit, J

T. Amarnath Goud, J