

**IN THE HIGH COURT OF TRIPURA**  
**A G A R T A L A**

**CRL.A. (J) No.63 of 2023**

**Sri Chenja Mohan Tripura @ Chensa,**  
son of Sri Tapindra Tripura @ Ranjan @  
Patindra, resident of Sajai Gairaing Para,  
West Jamicherra V/C P.S. Dhumcherra,  
District- Dhalai Tripura.

..... **Appellant**

**- V e r s u s -**

**The State of Tripura,**

..... **Respondent**

---

| For the Appellant(s)                 | :  | Mr. S. Das, Legal Aid Counsel.                                                                                       |     |    |  |   |
|--------------------------------------|----|----------------------------------------------------------------------------------------------------------------------|-----|----|--|---|
| For the Respondent(s)                | :  | Mr. R. Datta, PP.                                                                                                    |     |    |  |   |
| Date of hearing                      | :  | 23.02.2024                                                                                                           |     |    |  |   |
| Date of delivery of Judgment & order | :  | <b>12.04.2024</b>                                                                                                    |     |    |  |   |
| Whether fit for reporting            | :  | <table border="1"><thead><tr><th>YES</th><th>NO</th></tr></thead><tbody><tr><td></td><td>√</td></tr></tbody></table> | YES | NO |  | √ |
| YES                                  | NO |                                                                                                                      |     |    |  |   |
|                                      | √  |                                                                                                                      |     |    |  |   |

---

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

**JUDGMENT & ORDER**

This appeal arises out of the judgment dated 28.07.2023 passed by the learned Sessions Judge, Dhalai Judicial District, Ambassa in case No.ST (Tpye-1) 19 of 2022 whereby the appellant was convicted under Section 326 of the IPC and under Section 307 of IPC with a direction to suffer sentence of rigorous imprisonment for 5[five] years each and to pay a fine of Rs.10,000/- under both the counts and in default to pay the fine, to suffer rigorous imprisonment for a further period of 6 months.

**[2]** On 06.04.2022, one Tharmoni Tripura lodged a written Ejahar to Dhumacherra Police Station alleging, *inter alia*, that on that

day, at about 11.30 am the appellant who is the husband of his daughter, Ringkhalaiti Tripura, came to informant's house and gave Dao blows on Ringkhalaiti Tripura with an intention to kill her. She was taken to Dhumacherra hospital where she was receiving treatment. The police authority registered the case as Dhumacherra P.S Case No.03 of 2022 under Sections 324/307 of the IPC and proceeded with the investigation which finally culminated into filing of a chargesheet by the Investigating Officer (I.O), Sub-Inspector of Police, Sri Debananda Tripura [PW-10] under Sections 326/307 of the IPC against the appellant.

**[3]** The charges under Sections 307 & 326 IPC were accordingly framed by the Sessions Judge, Dhalai Judicial District, Ambassa, to which the appellant claimed his innocence and to establish the charges, the prosecution thereafter examined total 10 [ten] witnesses and finally, learned Sessions Judge found the appellant guilty under both the Sections as indicated above.

**[4]** Mr. S. Das, learned counsel appearing for the appellant, argued that no weapon of offence was seized by the I.O and that there were major dis corroborations amongst the testimonies of vital witnesses to the case. According to Mr. Das, learned counsel, it was doubtful that the uncle of the victim i.e. P.W.5 had any scope to witness the occurrence and PW-6, the sister of the victim, was also practically a hearsay witness. Learned counsel also argued that according to PW-3 & PW-4, i.e. grandmother and elder sister of the victim had claimed to have remained there at the scene of crime but

the victim nowhere stated that the said witnesses were present at the time of alleged occurrence. According to him, what sort of weapon exactly used for the alleged commission of crime was not proved by the prosecution and also there was no basis for the opinion by the doctor that a sharp cutting weapon was used to cause the injuries to the victim. Mr. Das, learned counsel further strengthened his submission, pointing out that the cause of occurrence was due to matrimonial dispute between the husband and wife but no FIR/complaint regarding any sort of such matrimonial discord between them was proved. None from the locality also came forward to depose against the appellant though according to the prosecution witnesses, the locals immediately arrived there after the occurrence and shifted the victim to the hospital. Other two points, learned counsel argued, were that no knowledge or intention of committing murder by the appellant was proved by the prosecution to attract Section 307 of the IPC but the trial court omitted to take notice of the same and even the appellant was deprived of the benefit of Probation of Offenders Act, 1958.

**[5]** Mr. Das, learned counsel finally relied on a decision rendered in ***Santosh Das vs. State of Tripura, (2014) 2 GLR 667*** where Division Bench of this Court has observed that to attract Section 307 IPC, the act must be done with such intention and knowledge or done under such circumstances that if death be caused by that act, the offence of murder would emerge. In that case, out of 4[four] injuries-one was grievous in nature caused on the left forearm of the victim.

Finally, the Court in that case set aside the conviction under Section 307 of the IPC and convicted him under Section 325 IPC. Mr. Das, learned counsel also referred another decision of this Court in ***Etim Miah vs. State of Tripura & Ors, (2018) 2 TLR 628***, where the victim suffered tenderness on the left temporal region, slight laceration over left supra orbital ridge, laceration with contusion over left lower lid, bruise over nose, incised wound on the left side of the neck and bruises over anterior abdominal wall. Keeping in view the evidence of the doctor in that case, this Court observed that the medical evidence did not disclose that the cumulative effect of such injuries were dangerous to life. Such injuries also did not cause any damage to any vital parts or organs of the body and therefore, finally concluded that the requirements of Section 307 of the IPC were not fulfilled in that case.

[6] The last decision as referred by Mr. Das, learned counsel was of Orissa High Court between ***Bagina Munda vs. State of Orissa*** [JCRLA No.26 of 2011 decided on 10.01.2024], where on appreciation of the evidences, the court came to the conclusion that in absence of any medical evidence that the injury caused upon the victim was fatal, though it was a grievous one and in absence of medical evidence that injured was hospitalised for more than 15 days, the prosecution had failed to prove that the appellant had intended to kill the victim and therefore, the conviction was altered from Section 307 to Section 326 IPC.

**[7]** Mr. R. Datta, learned PP appearing for the State, submitted that as per the evidence of the relevant witnesses, when the persons from locality had arrived at the spot, the appellant fled away with the weapon, otherwise he would inflict further Dao blows on the person of the victim and therefore, conduct of the appellant and severity of Dao blow, though may be single in count, amply justified that the appellant had intention to kill the victim or at least he had the knowledge that his such Dao blow in the vital area of the head of the victim, could result in her death. Mr. Datta, learned PP further argued that all the key witnesses corroborated with each other on material points regarding commission of alleged crime and therefore, there was no legal necessity to prove the motive of the crime. Mr. Datta, learned PP further supplemented his submission that during examination under Section 313 of the Cr.P.C., the appellant except giving some denials, did not explain as to how such injuries were sustained by the victim and why all the witnesses were deposing against him and therefore, such non-explanation further warranted the raising of a presumption adverse to the appellant.

**[8]** To gain support of his submissions, learned PP relied on the following decisions:

i) ***Manubhai Atabhai vs. State of Gujarat, (2007) 10 SCC 358*** - In this case, 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. This case was related to offence under Section 302 of the IPC

ii) ***State of Madhya Pradesh vs. Kedar Yadav (2009)***

**17 SCC 280**- In this case the following principles were reiterated for rendering conviction under section 307 IPC-

"13. It is sufficient to justify a conviction under Section 307 if there is present an intention coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt."

iii) ***Singapagu Anjaiah vs. State of Andhra Pradesh,***

**(2010) 9 SCC 799** - While dealing with the issue of applicability of Section 302 of IPC, Hon'ble Apex Court in this case viewed that as nobody can enter into the mind of the accused, his intention has to be gathered from the weapon used, the part of the body chosen for the assault and nature of the injuries caused.

iv) ***Prakash Chandra Yadav vs. State of Bihar and***

**others, (2017) 13 SCC 134**- Hon'ble Apex Court while discussing the applicability of Section 307 of IPC, held that the first part of the provision of Section 307 of IPC does not contemplate that receipt of any injury on the part of the victim is a prerequisite for convicting the accused and in the event any injuries are received, the second part of Section 307 would be attracted. However, the necessary ingredient for attracting the first part of Section 307 of IPC is the intention or knowledge of the accused.

v) ***Sadakat Kotwar and Anr. vs. The State of Jharkhand***, [2021 SCC Online SC 1046] - In this case, like ***Singapagu Anjaiah(supra)***, 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. In that case, a deadly weapon was used for giving a single blow to the vital part of the body of two victims i.e. in the stomach and near the chest and therefore, it was held that the appellants were rightly convicted under Section 307 read with Section 34 of IPC.

vi) ***Jafel Biswas and others vs. State of West Bengal***, (2019) 12 SCC 560 - In this case, it was held that absence of motive does not disperse the prosecution case if the prosecution succeeds in proving the same. When there are definite evidence proving an incident and the eyewitness account prove the role of the accused, absence in proving of the motive by the prosecution does not affect the prosecution case.

**[9]** The key witnesses in this case are PW-1, PW-3, PW.4, PW-5, PW-8 & PW-9.

PW-8, Ringkhaiti Tripura, the victim stated that two years prior to the date of the incident, her marriage with the appellant was solemnized and after the marriage, she was more or less happy in her matrimonial home but gradually, the appellant became rude to her and finally started physical torture on her on the pretext of family

affairs. Then she left her matrimonial home and started living in her paternal house at Padma Kumar Para, Dhumacherra. On fifth day of her stay there, at about 10.30 am, the appellant suddenly arrived at her matrimonial house and asked her to go with him. When she denied to join him in his house, he became furious and gave her blows from behind with a Takkal. At that time, she was on the embankment of a pond of her grandmother [PW-3] for tethering her cow. Consequently, she received bleeding injuries on her head, shoulder, right elbow etc. and became senseless. According to her, she regained her sense at Dhumacherra hospital. Subsequently, she came to know that her grandmother, elder sister, younger brother and few others had witnessed the occurrence. Except for a single denial that her husband did not assault her with Takkal, there was no cross-examination from the side of the defence.

**[10]** PW-3, Smt. Chanderbala Tripura, the grandmother of the victim, stated that on that day at about 11.30 am, the appellant went to their house when she was taking a bath in her pond and the victim was on the embankment of the pond for grazing purposes. The appellant met the victim there and after altercating with her, attacked her with a Takkal and assaulted her indiscriminately. Consequently, the victim suffered bleeding injuries and fell on the ground. Hearing the chaos and hullabaloo, when the locals arrived there, the appellant fled away with that Takkal towards the nearby jungle. The witness was also released without any cross-examination, except two denials

that the victim was never assaulted by the appellant with Takkal and she was never subjected to torture by him in her matrimonial home.

**[11]** PW-4, Smt. Mallika Tripura, the elder sister of the victim, in corroboration with above said witnesses stated that at the time of incident, the victim was on the bank of the pond, tethering her cow for grazing. The appellant met her there and had altercation with her and the witness noticed that the appellant had attacked the victim with a Takkal and assaulted her indiscriminately. The appellant fled away with that Takkal towards the nearby jungle and locals shifted the victim to Dhumacherra hospital. She was also similarly released by the defence without any cross-examination except for one or two denials.

**[12]** PW-1, Smt. Sasha Laxmi Tripura, mother of the victim, was also in the house at the relevant point in time and corroborated with the victim on material points. She stated that suddenly hearing the shouting of the victim, she along with PWs-3 & 4 went there and found the appellant giving Dao blows to the victim. Thereafter, he fled away through said jungle with that Dao. She was also not cross-examined on any substantial point by the defence except for a few denials.

**[13]** Learned Counsel Mr. Das strenuously argued that PW-1 was dis-corroborating with PW-3 and PW-4 stating that both the said two witnesses went with her to the place of occurrence but those witnesses had deposed otherwise, and therefore, their presence in the

place of occurrence became doubtful. As far as the question of dis-corroboration of PW-4 with PW-1 is concerned, nowhere has PW-4 stated that she was at some other place in her father's house wherefrom place of occurrence was not visible at that time. Therefore, there is no significant dis-corroboration between them. Regarding the evidence of PW-3 that she was taking a bath in the pond at the material time of incident, the same also cannot be treated as a major dis-corroboration. PW.1 simply stated that hearing the shouting of the victim she alongwith her mother and elder daughter rushed to the spot but did not say that all of them went there together from a single point of the house. Even if, it is treated as a little variation with the evidence of PW.3, but for this reason only, the entire evidence of PW.3 cannot be discarded, especially when she could not be shaken in her cross examination.

**[14]** PW-5, Sri Krittibashi Tripura, uncle of the victim, deposed that at the time of incident, he was in his house and saw that the appellant had attacked the victim with Takkal at the embankment of pond. He was also not cross-examined except giving of some denials to him by the defence. Learned counsel for the appellant referring to hand sketch map argued that it was not probable from this witness to see the incident from his house. But without any cross-examination on that point with reference to the site map, such inference cannot be drawn.

**[15]** PW-2, Sri Tharmoni Tripura (informant), father of the victim was not an eye witness of the incident and he met his daughter

in the hospital. Therefore, his testimony is not discussed further. PW-6, Sri Bijoy Babu Tripura, the cousin of the victim also stated that he learnt about the incident subsequently.

**[16]** PW-7, Sanjoy Tripura another uncle of the victim, however, deposed that on hearing the hue and cry from the house of the victim he rushed there and found the appellant was fleeing away with a Takkal towards nearby jungle. He also found the victim in an injured condition having fallen to the ground. He further stated that at the time of incident, both the grandmother and elder sister of victim were taking a bath in their pond. Learned counsel for the appellant also argued that according to this witness, PW.4 was taking bath in the pond, but PW.4 stated that she was doing her household work. Be that as it may, such minor variations in the evidence of the witnesses are natural and cannot be counted as fatal for the prosecution case. In view of the enormous evidence as discussed above, it is established that the appellant had caused hurt on the person of the victim by a Takkal on the alleged date of incident.

**[17]** Mr. Das, learned counsel, though argued that there was dis-corroboration between the parents of the victim and other eye witnesses regarding the nature of the weapon used, as PW-1, mother of the victim and PW.2, father of the victim both had stated about the use of Dao by the appellant in inflicting such injury, whereas other eye-witnesses, including the victim had deposed about use of Takkal by the appellant. Such dis-corroboration is, however, insignificant specially when the father was not the eye-witness and both the Takkal

and Dao are similar nature of weapon with a very little variation in their shape.

**[18]** Coming to the point of medical evidence, PW-9 Dr. Indrajit Debbarma, stated that the following injures were found by him on the person of the victim and she was hospitalised for 5 days. He also proved his injury report.

**Description of injuries:**

- |                          |                               |                                              |                 |                      |
|--------------------------|-------------------------------|----------------------------------------------|-----------------|----------------------|
| <b>(i) Incised wound</b> | <b>- (8 cm X 1 cm X 2 cm)</b> | <b>- Over left parietal region of scalp</b>  | <b>- Severe</b> | <b>-Sharp object</b> |
| <b>(ii) Contusion</b>    | <b>- 1.5 cm in diameter</b>   | <b>-Over posterior aspect of mid forearm</b> | <b>-Slight</b>  | <b>-Blunt object</b> |

**[19]** Despite the fact that the medical officer did not, in specific words, say that such injures were dangerous enough to endanger the life of the victim, but the measurement of the first injury itself suggests that the first injury was very serious in nature and was caused over the most vital parts of the head with force, though the second injury was simple in nature. Inflicting such type of injury on the vital part of the head with a higher degree of force is sufficient to infer that the appellant had inflicted such injury with the intention to kill her or at least he had the knowledge that such type of injury could take away the life of the victim. Therefore, Section 307 of IPC is attracted in the instant case.

**[20]** In the instant case, the victim is a rustic tribal woman and was brutally attacked in her own paternal house by the appellant

who was also armed with one sharp cutting weapon like Takkal while visiting his in-laws house. This fact itself indicates that he had certain mental preparations to commit the crime. The injury was inflicted with greater force on one of the most vital parts of the human body and he left the place, leaving the victim in seriously injured condition, when he found other local people were arriving there. In such a backdrop, releasing the appellant on admonition or on execution of bond will give a wrong message to the victim as well as to the society. Therefore, the appellant is not entitled to the benefit of Probation of Offenders Act, 1958.

In view of the above, it is held that the appeal is devoid of merit and accordingly, the same is dismissed.

Send down the LCRs forthwith with a copy of this judgment.  
Pending application(s), if any, also stands disposed of.

**JUDGE**

SATABDI  
DUTTA

Digitally signed by SATABDI  
DUTTA  
Date: 2024.04.12 18:14:36  
+05'30'

*Sujay*