

**HIGH COURT OF TRIPURA  
AGARTALA**

**Crl. A (J) No. 59 of 2023**

**1. Sri Charan Mohan Tripura,**  
S/O Sri Chandra Mohan Tripura,  
Resident of Village-Badainya Para,  
P.S-Gonda Twisa, District-Dhalai,  
Tripura, Age-35 years.

**2. Sri Utonga Tripura @ Tonga,**  
S/O Sri Chikanya Tripura,  
Resident of Padma Ranjan Para,  
P.S-Gonda Twisa, District-Dhalai,  
Tripura, Age-30 years.

**..... Appellant(s)**

**V E R S U S**

**The State of Tripura,**  
(to be represented by the Learned Public Prosecutor,  
Hon'ble High Court of Tripura).

**.....Respondent(s)**

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|-------------------|---|--------------------------------|
| For Appellant(s)  | : | Mr. K Nath, Legal-aid-Counsel. |
| For Respondent(s) | : | Mr. S Ghosh, Addl. PP.         |
| Fit for Reporting | : | <b>NO</b>                      |

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

**JUDGMENT & ORDER (ORAL)**

**22/05/2024**

Heard Mr. K Nath, learned legal-aid-counsel appearing for the appellants and Mr. S Ghosh, learned Addl. PP appearing for the respondent-State.

**2.** The appeal arises out of the judgment and sentence dated 19.07.2023 passed by the learned Sessions Judge, Dhalai, Ambassa in case No. ST (Type-1) 28 of 2018 whereby and where under both the appellants were convicted under section 307 IPC and Section 450 IPC and were sentenced to suffer rigorous

imprisonment for seven years and to pay a fine of Rs.10,000/- each under both the counts, and in default to pay the fine, to suffer further rigorous imprisonment for six months. Both the sentences were directed to run concurrently.

**3.** An oral FIR was lodged by one Smt. Shyamariika Tripura on 10.03.2018 at Gandacherra Hospital alleging that on that day at around 9 am when her husband Sri Umesh Tripura was working on the roadside in front of their house, both the appellants started assaulting him with catapult and lathi and to save himself, her husband took shelter in the kitchen of his maternal uncle, Sri Sushil Tripura. The appellants chased him there and thrashed him with dao, lathi etc. with a view to kill him and finally left him there with severe injuries on his face, nose and ear. Neighbouring people thereafter shifted the victim to Gandacherra Hospital wherefrom he was shifted to Udaipur Hospital. It was further stated by the informant that previously, on 04.03.2018 at about 12 pm, both the appellants in search of her husband entered into her house and took away some coconuts with them by giving threat to the informant. Thereafter, the said matter was informed by the victim husband of the informant to the Gandacherra police station.

**4.** The ejahar was reduced to writing by SI Nidhiram Reang who also started investigation on the spot and lateron being endorsed with the investigation by the Officer-In- Charge of the police station to continue with investigation, and finally submitted the charge-sheet under Sections 448/325/307/34 of the

Indian Penal Code (for short- IPC) against both the appellants. The FIR was registered as Gandacherra PS case No. 7 of 2018 under Section 448/326/307/34 of IPC.

**5.** Ld. Sessions Judge framed charges under section 450 and section 307 read with section 34 IPC. During the trial as many as 10 (ten) witnesses were examined by the prosecution and the defendants adduced none.

**6.** Learned legal aid counsel, Mr. K Nath, appearing for the appellants submits that there were discrepancies in the evidence of prosecution witnesses as some of them stated that the appellants beat the victim with catapult and lathi whereas some others stated that the appellants used only lathi. Even one witness also stated about the use of dao by the appellants and therefore, according to learned counsel, none of the witnesses were reliable witnesses.

**7.** Mr. Nath, learned counsel further contended that one lathi was recovered from the first place of occurrence which was not the place of the main incident of thrashing. More so, there was no special identification mark or signature of any witness given in the said seized lathi and therefore, the said seized lathi could not be connected with the alleged commission of offences.

**8.** Learned counsel further submitted that the second incident allegedly occurred in the house of one Sushil Chandra Tripura whose wife namely Madhu Bala Tripura (PW-8) stated that the incident occurred in her kitchen when she was taking her meal

but such fact of taking her meal in the kitchen was omitted in her statement recorded under Section 161 Cr.P.C. and therefore, she was also not a reliable witnesses.

**9.** Next point of argument of Mr. Nath, learned legal-aid-counsel was that the informant was not conversant with the Bengali language but FIR was written in Bengali by SI Nidhiram Reang. There was also no certificate of said police officer as to how he could understand the language of the informant and could write it down in Bengali. Moreover, the informant in her cross examination stated that the scribe of the FIR was one Khadiram Reang and not Nidhiram Reang, which creates further doubt regarding the veracity of the prosecution case.

**10.** Mr. S Ghosh, learned Addl. PP, however, submits that all the material witnesses corroborated with the victim in respect of the incident and, therefore, all of them were very much reliable and learned trial court committed no error in convicting both the appellants in this case. However, learned Addl. PP, agrees to the submission of Ld. Counsel Mr. Nath that so far the applicability of Section 307 IPC is concerned, there is no satisfactory evidence that such offence was committed by the appellants with the intention to kill the victim or having the knowledge that by such an act of the appellants, the victim could be killed and therefore, the applicability of Section 307 is doubtful in the case. But according to learned Addl. PP, Section 325 IPC is satisfactorily established in this case by the prosecution.

**11.** On perusal of the evidences as surfaced in the record, it is found that the victim Umesh Tripura (PW-9) in his evidence stated that on the alleged date of occurrence at about 9 am he was working in his house and at that time both the appellants had entered there and attacked him with catapult and hit him on his left eye and thereafter, to save himself he rushed to the house of Sushil Tripura. There also the appellants followed him in the kitchen of the house and hit him with lathi causing injury on his face and head and, thereafter, he became fainted. According to him, at the time of incident, the wife of Sushil Tripura, namely Madhu Bala Tripura was available in the kitchen. He also stated that he had received treatment at Gandacherra Hospital and then at Udaipur Hospital and finally, at AGMC and GBP Hospital, where he was admitted till 26.03.2018 and he received injuries on his left eye, head, ear and teeth.

In his cross-examination, he stated that he did not mention to the investigation officer about the specific portions of his person where he got injuries or the fact that the wife of Sushil Tripura was available in the kitchen, at that time. No further material was found during the cross-examination of this witness.

**12.** PW-8 namely Madhu Bala Tripura, is the wife of said Sushil Tripura, who also corroborated with PW-9 stating that on the alleged date of incident when she was taking meal in her kitchen and at that time the victim and the appellants entered there and both the appellants beat the victim in her kitchen with lathi, causing injury on his eye and therefore, he was shifted to

Hospital. In her cross-examination, it reveals that her statement that she was taking meal in the kitchen was omitted in her statement recorded under section 161 Cr.P.C. Such omission is very insignificant.

**13.** PW-3 namely, Sashanka Tripura also deposed in the similar line that about one year ago one day at about 9 am he heard hue and cry and found both the appellants and the victim were running towards the house of Sushil Tripura. Thereafter, he also went to that house and found the victim in injured condition. He also saw both the appellants entering into the house of said Sushil Tripura with dao and lathi. However, this portion appears to be result of little bit of exaggeration for mentioning of the word 'dao', but for the said reason, his entire evidence cannot be discarded.

**14.** PW-6 namely Sri Sefali Tripura and PW-7 namely Kumar Ranjan Tripura both stated that while both of them were in conversation with each other on the relevant date and time, they found both the appellants chasing the victim towards the house of Sushil Tripura and they were armed with lathi and thereafter, both the appellants beat up the victim in the kitchen of Sushil Tripura and then these witnesses, with other persons of the locality shifted the victim to Gandacherra Hospital. Nothing came out in their cross examinations to discard their evidences.

**15.** PW-2 i.e. the informant Smt. Shyamariika Tripura, also stated that on 10.03.2018 the appellants came to her house and attacked her husband and thereafter, chased her husband towards

the house of Sri Sushil Tripura and in the kitchen of the hut of Sushil Tripura, they beat the victim with lathi and catapult, causing injury on his eye and ear and thereafter, he was shifted to Gandacherra Hospital. She also stated about another prior incident dated 4.3.2018 that on that day the appellants had taken away coconut from her house and also abused her with filthy languages when he raised objection thereto. Then she lodged one complaint at the police station. In her cross examination, she has admitted that Sushil Tripura was maternal uncle of her husband. She further stated that one Khadiram Reang reduced her FIR or oral ejahar into writing, whom she can indentify by face but she didnot know the exact name.

**16.** As pointed out by learned counsel Mr. Nath, the word catapult is used by this witness as one of the weapon of offence and the name of Khadiram Reang was wrongly introduced by her as scribe of the FIR and therefore she was not a reliable witness. However, this Court is of the view that when the witness herself has stated that she did not know the exact name of the scribe, therefore such reply in cross examination is not material. Relationship with the victim also cannot be a ground to disbelieve a witness. Similarly, use of word catapult by her, even if treated as little bit of exaggeration, would also not upset her entire testimony.

**17.** The medical officer i.e. Dr. Rakesh Majumder (PW-1) stated that he had found the following injuries while examining the victim on 11.03.2018 at AGMC and GBP Hospital, viz:

*(i) Abrasion over the medial canthas of left eye with peri orbital echymosis on the left eye. CT scan was done and fracture was found over the postero lateral wall of left orbit; and*

*(ii) Blunt injury (swelling) on the left side middle 3<sup>rd</sup> face. Scan report shows left side zygomatic process fracture and frontal process fracture of left maxilla and ethmoid bone.*

According to PW.1, the injuries were caused by heavy blunt type object and were dangerous in nature.

**18.** One bamboo stick was seized by the investigating officer, PW-10 from the first place of occurrence which is not the house of said Sushil Tripura. Therefore, that seizure of bamboo could not establish the use of the same in respect of the incident occurred in the second place of occurrence. However, when the testimony of victim and relevant witnesses were very much trustworthy and reliable, mere non-recovery of any weapon from the second place of occurrence will not be fatal for the prosecution case. Though involvement of both the appellants in beating the victim is established in the case, but the prosecution could not prove the fact that the appellants had committed such offence with the intention or knowledge or under such circumstances that if death was caused by such acts, they would be guilty of committing murder. The injuries as inflicted upon the victim also do not justify any inference to attract section 307, IPC. Learned Sessions Judge therefore committed fault in convicting the appellants under Section 307 IPC and under Section 450 IPC.

**19.** There is no specific evidence of any preparation for causing harm to the victim by the appellants and no weapon of offence was also seized from the second place of occurrence. Therefore, proper provision for convicting the appellant would be Section 325 IPC and Section 451 IPC. Section 452 IPC can also not be applied in this case for above said reasons.

**20.** In view of above, the impugned judgment of conviction and sentence are modified and altered. Both the appellants are accordingly convicted under Section 325 IPC read with Section 451 IPC with the aid of provisions of sections 221 and 464, Cr.P.C.

**21.** Both the appellants belong to the Scheduled Tribe Community hailing from hilly areas. Both are cultivators by profession shouldered with the responsibility to maintain their families. Nothing is there that is negative regarding their antecedents. They are also not educated enough to be capable of evaluating their each and every act.

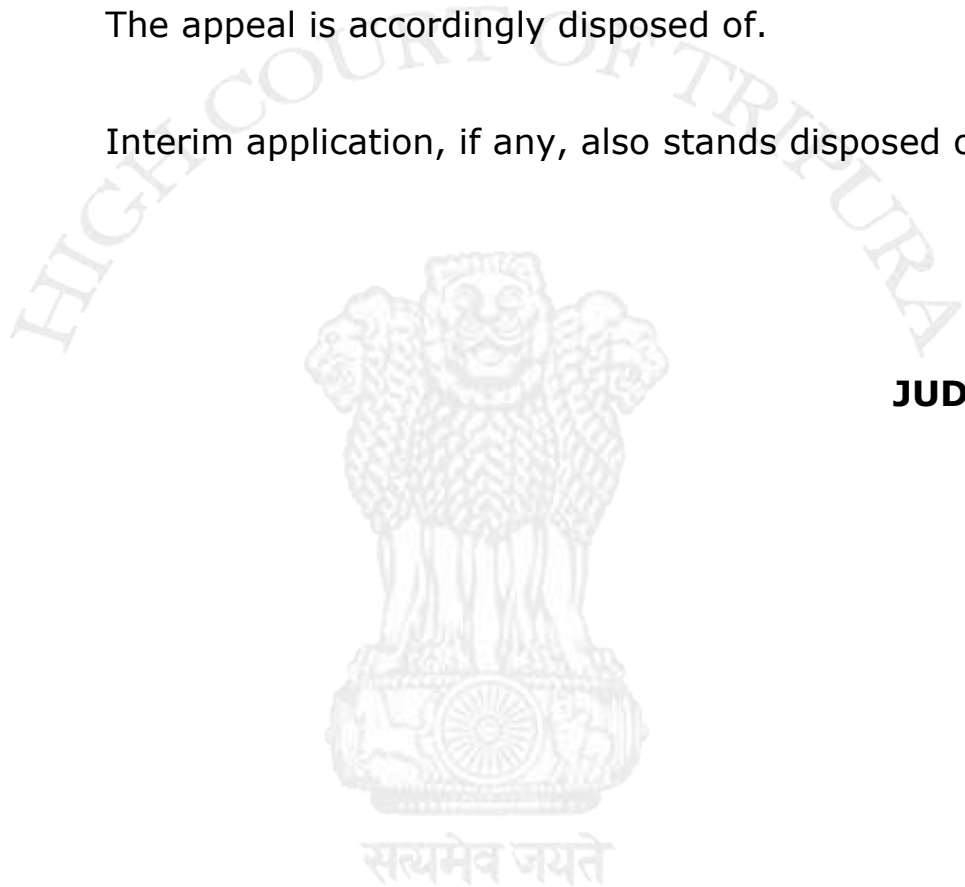
**22.** Considering all these aspects, both the appellants are sentenced to suffer RI for 3 (three) years under Section 325 IPC and to pay a fine of Rs.2000/- each, in default, to suffer further SI for 30 (thirty) days. Both the appellants are also sentenced to suffer RI for 1 (one) year under Section 451 IPC and to pay a fine of Rs. 1000/- each, in default, to suffer SI for 15 (fifteen) days. If the fine money is realized or paid, same shall be handed over to the victim, Sri Umesh Tripura.

**23.** Registry shall communicate the copy of the judgment at the earliest to the learned Trial Court for issuing modified conviction warrant accordingly by said Court in terms of above sentences.

Return the LCRs.

The appeal is accordingly disposed of.

Interim application, if any, also stands disposed of.



**JUDGE**

**SATABDI DUTTA** Digitally signed by SATABDI DUTTA  
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