

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.A.No.10 of 2024

The State of Tripura,
Represented by the Secretary,
Home Department, Government of Tripura

.... Appellant.

Versus

- 1. Md. Gias Uddin,**
S/o Late Abdul Khaleque
Resident of Jubarajnagar Ward No.1,
P.S.- Dharmanagar, District-North Tripura
- 2. Md. Rasel Uddin,**
S/o Late Abdul Sahid
Resident of Jubarajnagar Ward No.1,
P.S.- Dharmanagar, District-North Tripura
- 3. Mst. Parbin Neecha,**
W/o Md. Gias Uddin
Resident of Jubarajnagar Ward No.1,
P.S.- Dharmanagar, District-North Tripura
- 4. Mst. Kabutar Neecha,**
W/o Md. Abdul Sahid
Resident of Jubarajnagar Ward No.1,
P.S.- Dharmanagar, District-North Tripura

.....Respondents.

For Appellant(s)	:	Mr. Raju Datta, P.P., Mr. Rajib Saha, Addl. P.P.
For Respondent(s)	:	Mr. Ratan Datta, Adv. Mr. Aditya Baidya, Adv. Mr. Suraj Dhanuk, Adv. Ms. Saswati Nag, Adv.
Date of Hearing	:	06.03.2025
Date of delivery of Judgment and Order	:	07.03.2025
Whether fit for Reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal under Section 378(1)(b) of Cr.P.C. read with Section 377 of Cr.P.C. is preferred challenging the order of conviction and sentence dated 15.12.2023 delivered by Learned Additional Sessions Judge, North Tripura, Dharmanagar in connection with case No. CrI. Appl. No.07 of 2023. By the said order of conviction and sentence Learned Appellate Court has modified the order of conviction and sentence dated 29.08.2023 under Section 326/324/34 of IPC delivered by Learned CJM, North Tripura, Dharmanagar in connection with case No.PRC(WP) 19 of 2022 and sentenced the respondent-accused persons to pay a fine of Rs.1000/- each under Section 448 of IPC and also sentenced the respondent-accused persons to pay a fine of Rs.1000/- each under Section 323 of IPC in default to suffer Simple Imprisonment for one month for each offences and thus acquitted the respondent-accused persons from the charge levelled against them under Section 324/326 of IPC.

02. Heard Learned P.P., Mr. Raju Datta along with Mr. Rajib Saha, Learned Addl. P.P. appearing on behalf of the State-appellant and also heard Learned Counsel Mr. Ratan Datta appearing on behalf of all the respondent-accused persons.

03. Taking part in the hearing, Learned P.P. for the appellant first of all drawn the attention of this Court that in this case on the basis of an FIR laid by one Md. Ibrahim Ali, the case was registered under Section 447/326/34 of IPC against all the respondent-accused persons and after completion of investigation the IO laid charge sheet against all the respondent-accused persons under Section 447/325/34 of IPC and accordingly cognizance of offence was taken and in course of trial Learned Trial Court framed charge against all the accused persons under Section 448/326 read with Section 34 of IPC and the same was explained to all the respondent-accused persons in bengali to which they pleaded not guilty and claimed to be tried.

During trial to substantiate the charge prosecution has adduced in total 6 numbers of witnesses and after closer evidence of the prosecution the respondent-accused persons were examined under Section 313(1)(b) of Cr.P.C. when they pleaded innocent and also denied to adduce any witness in support of their defence and finally on conclusion of trial Learned Trial Court found the appellants to be guilty and convicted them under Section 326 of IPC to suffer rigorous imprisonment for 3 years and to pay a fine of Rs.20,000/- each i.d. to suffer rigorous imprisonment for further 3 months and the Learned Trial Court further sentenced all the aforesaid convicts under Section 324 of IPC and to suffer rigorous

imprisonment for 1 year each and to pay fine of Rs.5000/- each i.d. to suffer rigorous imprisonment for further one month with a further direction that all the sentences shall run concurrently.

After that, the respondent-accused persons as appellants preferred an appeal before the Court of Learned Sessions Judge, North Tripura, Dharmanagar who transferred the case to the Court of Learned Addl. Sessions Judge, North Tripura, Dharmanagar and the Learned Addl. Sessions Judge, North Tripura, Dharmanagar heard the case on merit and vide judgment dated 15.12.2023 set aside the sentences imposed by the Learned Trial Court under Section 326/324/34 of IPC but modified the sentences and convicted the respondent-accused persons under Section 448/323 of IPC.

04. Learned P.P. further drawn the attention of the Court that before the Learned Trial Court as already stated the prosecution has adduced in total 6 numbers of witnesses and from the evidence on record it is crystal clear that all the respondent-accused persons committed the offence, so Learned Trial Court rightly found the respondent-accused persons to be guilty and convicted them accordingly and there was no infirmity to the judgment. But when the matter was heard by the Learned Addl. Sessions Judge, North Tripura, Dharmanagar although he found the appellants to be guilty but modified the sentence punishable under Section 448/323 of IPC which was not permissible in the eye of law and contrary to

the evidence on record and furthermore according to Ld. P.P., Learned Addl. Sessions Judge without application of proper mind only imposed fine instead of imprisonment. As a result, the victim has been suffered serious injury and furthermore since the respondent-accused persons are proved to be committed the offence, so by showing lenient view there was no scope on the part of the Learned Addl. Sessions Judge to impose the fines only instead of imprisonment. So Learned P.P. finally urged for setting aside the judgment and order of conviction and sentence delivered by Learned Addl. Sessions Judge, North Tripura, Dharmanagar upholding the order of sentence and conviction delivered by the Learned Trial Court i.e. Learned CJM, North Tripura, Dharmanagar.

05. On the other hand, Learned counsel Mr. Ratan Datta appearing on behalf of the respondent-accused persons submitted that from the evidence on record it is crystal clear that the prosecution before the Learned Court below has miserably failed to prove the charges levelled against the respondent-accused persons under Section 326/324 of IPC for which the Learned Appellate Court rightly modified the sentence. Learned counsel also submitted that in this case no alleged weapon of offence was seized by IO. Even from the injury report of the victims it is crystal clear that no case under Section 326/324 read with Section 34 of IPC made out against any of the respondent-accused persons. So according to Learned defense counsel there was no infirmity in the

judgment delivered by Learned Appellate Court. He also referred the cross-examination portion of PW-4 and cross-examination portion of PW-6 i.e. SI Sri Dayal Chakma and drawn the attention of the Court that Learned Appellate Court considering the material evidence on record modified the order of conviction and sentence delivered by Learned Trial Court. So, according to learned counsel for the respondent-accused persons there is no merit in the appeal and urged for dismissal of this appeal upholding the order of sentence delivered by the Learned Appellate Court.

06. Now, before proceed with the merit of the appeal let us see the contents of the FIR and also the evidence on record of the prosecution. As already stated, this case was set into motion on the basis of an FIR laid by PW-1, Md. Ibrahim Ali alleging *inter alia* that on 13.06.2021 in the afternoon at about 04.00 pm the accused persons Gias Uddin, Rakesh Uddin, Kabutar Neecha and Parbin Begum jointly after entering into his residence dragged them from the dwelling hut and caused hurt to his son Azad Uddin and his wife armed with deadly weapons and hence he laid the FIR. The case was registered and the IO laid chargesheet. Before the Trial Court prosecution has adduced in total 6 numbers of witnesses. Now let us discuss the evidence on record.

07. PW-1, Md. Ibrahim Ali is the informant of this case. He deposed that on 13.06.2021 at about 04.00 pm the accused persons entered into his house and started assaulting his son

Md. Azad Uddin with dao, dagger, ballam and lathi etc. Due to such assault, his son sustained severe injuries on his head. When the informant and his wife tried to rescue their son from the accused persons that time they also assaulted them. He sustained severe injuries in his head and arm and his arm got fractured. His wife sustained injuries in her arm. After assaulting them, the accused persons left their house. Then, local people gathered and shifted them to hospital. His son was referred from Dharmanagar hospital for treatment and they brought him to Silchar, Assam and then to Guwahati, Assam for better treatment. Due to sustaining injury his son is still living partially disabled life and on the following day of the incident he laid the FIR. He identified his signature on the complaint petition marked as Exbt.P1.

During cross-examination he stated that the distance between his house and the house of the accused persons was about 100 cubits. Their paddy lands are lying adjacent to each other. He also stated that the police examined him in connection with this case, but he did not say to IO the nature of injuries sustained by him, his wife and his son in the incident. He also did not say to IO that his son sustained disabled injury and further admitted that the accused persons filed a case against him and his son.

08. PW-2 Mst. Rubi Begam deposed that the informant of this case is her father-in-law. On 13.06.2021, at about 01.00 pm there was a quarrel between her husband and his

uncle Md. Gias Uddin regarding paddy land and regarding damaging of grass by cattle. The quarrel was ended but at about 04.00 pm Md. Gias Uddin and Md. Rasel Uddin entered into their house and dragged her husband outside of their house then accused Parbin Neecha and Mst. Kabutar Neecha joined them and all the 4 accused started assaulting her husband with dao, dagger and lathi and due to assault her husband sustained severe injuries on his head. When her parents in law tried to rescue her husband from the accused persons that time the accused persons also assaulted them and due to such assault her father-in-law sustained severe injuries to his head and arm and his arm got fractured and her mother-in-law sustained injuries to her arm. When she went to save her family members the accused persons also threatened her and she got frightened and bolted herself and after assaulting the accused persons left their house. Then the local people assembled there and shifted them to hospital. Her husband was referred to Dharmanagar hospital for treatment. He was taken to Silchar and then to Guwahati for better treatment.

During cross-examination she stated that police examined her. But she did not say to IO that the accused persons threatened her and being frightened she bolted herself and her minor child in a room and she did not specifically say to the IO that the nature of injuries sustained by her husband and parents-in-law in the incident complained of. Further she

admitted that the accused persons filed a case against her husband and her father-in-law. She also admitted that the houses of Md. Akkadach Ali and Md. Abdul Sukkur were situated nearby their house and at about 20 to 25 persons gathered around her house after the incident.

09. PW-3 Md. Azad Uddin is the main victim and the son of the informant deposed that on the 13.06.2021 in the morning, there was a quarrel between him and his uncle Md. Gias Uddin regarding paddy land and regarding damaging of grass by cattle. On that day at about 04.00 pm the accused persons namely Md. Gias Uddin, Md. Rasel Uddin, Mst. Parbin Neecha and Mst. Kabutar Neecha entered into their house and started assaulting him with a dao, stick, etc. Accused Rasel Uddin assaulted on his right arm with a dao and he sustained cut injuries. The accused Md. Gias Uddin assaulted him on the right side of his head with a stick. He could not say whether the said stick had anything affixed with or not and due to assault he lost consciousness immediately. He regained his sense at hospital at Assam after few days.

During cross-examination he stated that he did not say to IO that Md.Rasel caused hurt to him with a dao in his right arm and Md. Gias Uddin assaulted him with a stick like thing on his head. He stated in general to the IO that the accused persons had assaulted him with dao, lathi, ballam etc.

10. PW-4 Mst. Hena Begam is the mother of the victim and wife of the informant. She deposed that on 13.06.2021 at about 04.00 pm accused Md. Gias Uddin, Md. Rasel Uddin, Mst. Parbin Neecha and Mst. Kabutar Neecha entered into their house and started assaulting her, her husband and her son. The accused persons were armed with dao, dagger, stick and spear. They assaulted her with dagger and two fingers of her left hand got fractured. The accused persons also assaulted her husband on his head and left arm with dao and he sustained severe injuries in his head and his left arm got fractured. Accused Md. Gias Uddin assaulted on the right side of head of her son Md. Azad Uddin with spear and it penetrated the skull of her son. Accused Md. Rasel Uddin assaulted on the right arm of her son with dao and he sustained severe cut injuries there. And after the incident, local people gathered their house and they arranged for sending them to hospital. Her son was referred from Dharmanagar hospital and they brought him to Guwahati Medical College, Assam for treatment where he was treated for 13/14 days. The injuries on the head of her son were so serious that after the incident, the right side of his body stopped working properly and presently he was suffering from disability.

During cross-examination she stated that she did not specifically say to the IO that which accused assaulted them in which manner and what specific injuries were

sustained by them. She also admitted that the accused persons also filed a case against them and that the said case is still pending and there are other residential houses at a distance of about 100/150 meters away from their house.

11. PW-5 Dr. Chandan Mallik was the medical expert. He deposed that on 13.06.2021 he was posted as Medical Officer at Dharmanagar Hospital. On that day, he examined two patients named Mst. Hena Begam and Md. Ibrahim Ali at about 05.30 pm and 07.30 pm respectively. On examination of Hena Begam, he found one cut wound over left hand. The patient was discharged with advice after preliminary treatment. The patient had appeared before him with history of physical assault. He prepared report and identified his report marked as Exbt.P2 and signature marked as Exbt.P2(a). He further stated that on examination of Ibrahim Ali found one lacerated wound over scalp measuring 3 cm X ½ cm and minor injury i.e. tender swelling over left hand with fracture at left fourth metacarpal. The injuries were fresh, simple and grievous respectively which might have been caused by blunt object. The patient was discharged from the hospital on the following day with advice. The patient had appeared before him with history of physical assault. He identified the report prepared by him marked Exbt.P3.

During cross-examination he stated that he has not mentioned any case number over his report with regard to Mst.

Hena Begum. He further stated that the injuries present over the person of the aforesaid patients were of such nature which may be caused in a road traffic accident as well. Nothing more came out relevant.

12. PW-6 SI Dayal Chakma deposed that on 15.06.2021 he was posted at SI police of Dharmanagar PS. On that day the investigation of this case was endorsed to him by the then O.C. of Dharmanagar PS namely Inspector Milan Chandra Datta and he identified his signature on the printed FIR marked Exbt.P4. He further stated that during further investigation he visited P.O. and prepared hand sketch map and identified the hand sketch map marked as Exbt.P5 and the index of the hand sketch map marked as Exbt.P5(a). He examined available witnesses and recorded their statements under Section 161 of Cr.P.C. and on completion of investigation he laid chargesheet against the accused persons.

During cross-examination he stated that the printed form of FIR does not mention any reason for delay in lodging the FIR. He further stated that he did not examine any other local witnesses other than the family members of the victim in connection with the case. Again volunteered that no local witness were aware of the matters in issue. He also stated that his investigation revealed that as per medical injury report of Md. Azad Uddin issued by Guwahati Medical College he sustained injury by falling from height.

These are the sum of substance of the evidence on record of the prosecution to substantiate the charges framed by Learned Trial Court.

13. I have seen the evidence on record and also heard arguments of both the sides at length. Admittedly in this case there was no explanation in respect of delay in lodging the FIR although the said point was not raised by the Learned Counsel for the accused persons either before the Appellate Court or before the High Court at the time of hearing. Surprisingly, there is no evidence on record that the alleged weapon of offence was seized by the IO during investigation. Even there is no explanation from the side of the prosecution as to why those alamsats were not seized. No independent public witnesses apart from the family members of the informant could produce by the prosecution in this case. Now the witnesses of the prosecution in course of their examination stated that soon after the incident so many persons assembled to their house but surprisingly prosecution could not adduce any witness to support the prosecution case. Even there was also no explanation from the side of the prosecution as to why the neighbouring persons who were present to the P.O. soon after the occurrence of offence were not cited as witness in this case. Even no injury report of the victim Md. Azad Uddin was produced and proved by the prosecution in this case. Although there was allegation that he sustained cut injury and due to

causing of hurt he has become partially disabled but surprisingly when the IO came before the Court to depose as a witness he in course of his cross-examination very specifically stated that the victim Md. Azad Uddin sustained injury after falling from height. Prosecution in course of hearing of argument failed to give any explanation in this regard.

So, after going through the evidence on record it appears to this Court that the Learned Appellate Court at the time of delivery of judgment rightly acquitted the respondent-accused persons from the charges leveled against them under Section 326/324/34 of IPC.

14. Now, regarding upholding of sentence of the respondent-accused persons under Section 448/323 of IPC, it appears that the witnesses of the prosecution were duly cross-examined by the respondent-accused in course of trial before the Learned Trial Court but regarding sustaining of injury by the victims, the respondent accused persons failed to make out any case to disbelieve their evidence. Admittedly, no weapon of the offence was seized in this connection with this case or could produce before the Court during trial. The injury report of the victim Md. Azad Uddin who according to prosecution sustained huge injury and became permanently disabled could not be produced and proved by the prosecution in this case and prosecution also has failed to give any explanation in this regard. So, after considering the materials on record it appears

to this Court that the prosecution was successful in proving that the respondent-accused persons on the alleged day entered into the residence of the informant and caused hurt to the informant, his wife and son and in my considered view, Learned First Appellate Court rightly convicted the respondent-accused persons under Section 323/448 of IPC modifying the order of sentence and conviction under Section 326/324 read with Section 34 of IPC.

15. Now we are to see as to whether the sentence imposed by Learned Appellate Court was adequate or not. In this regard, Learned P.P. in course of hearing of argument submitted that admittedly certain lacunas were there in the prosecution case and as such the Learned Appellate Court rightly convicted the respondent-accused persons under Section 448/323 of IPC. But at the time of sentence Learned Appellate Court without imposing any punishment of imprisonment to them only imposed fine which caused miscarriage of justice, because due to causing of hurt the victim has sustained disability and still undergoing treatment. So, the Learned Appellate Court has shown lenient view in regard to sentencing of the respondents. So, Learned P.P. in course of hearing urged for imposing both the sentence of imprisonment as well as fines which the relevant Sections 323 and 448 of IPC provides. For the sake of convenience, I would like to refer herein below the relevant provisions of Sections 323 and 448 of IPC which are as follows:-

"323. Punishment for voluntarily causing hurt.- Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

448. Punishment for house-trespass.- Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."

16. From the aforesaid provisions of IPC it appears that in both the cases the Court may impose punishment of imprisonment or fine or both. But in the given case the Learned Appellate Court instead of imposing any imprisonment only imposed sentence of fine only upon the respondents. In this regard, Hon'ble the Apex Court in **State of Rajasthan vs. Banwari Lal and Another** reported in **2022 12SCC 166** in Para Numbers 10-11.3 has been pleased to observe as under:-

"10. The manner in which the High Court has dealt with the appeal and has reduced the sentence, without adverting to the relevant facts and without considering the gravity and nature of offence, is unsustainable. The High Court has dealt with the appeal in a most casual and cavalier manner. The judgment and order: 2015 SCC OnLine Raj 12277 passed by the High Court reducing the sentence is nothing but an instance of travesty of justice and against all the principles of law laid down by this Court in a catena of decisions on imposing appropriate punishment/ suitable punishment.

11. At this stage, few decisions of this Court on principles for sentencing and tests for awarding an appropriate sentence in a given case are required to be referred to and considered:

11.1. In Mohan Lal: (2018) 18 SCC 535 the High Court modified the judgment and order passed by the learned trial court and sentenced the accused to the period already undergone by him, which was only six days and absolutely no reasons, much less valid reasons, were assigned by the High Court. While setting aside the order:2015 SCC OnLine Raj 7766 passed by the High Court, this Court has observed in paras 9 to 13 as under: (SCC pp. 537-39)

9. The High Court simply brushed aside the aforementioned material facts and sentenced the accused to the period

already undergone by him, which is only 6 days in this case. In our view, the trial court and the High Court have taken a lenient view by convicting the accused for offences under Sections 325 and 323 IPC. Absolutely no reasons, much less valid reasons, are assigned by the High Court to impose the meagre sentence of 6 days. Such imposition of sentence by the High Court shocks the judicial conscience of this Court.

10. Currently, India does not have structured sentencing guidelines that have been issued either by the legislature or the judiciary. However, the courts have framed certain guidelines in the matter of imposition of sentence. A Judge has wide discretion in awarding the sentence within the statutory limits. Since in many offences only the maximum punishment is prescribed and for some offences the minimum punishment is prescribed, each Judge exercises his discretion accordingly. There cannot, therefore, be any uniformity. However, this Court has repeatedly held that the courts will have to take into account certain principles while exercising their discretion in sentencing, such as proportionality, deterrence and rehabilitation. In a proportionality analysis, it is necessary to assess the seriousness of an offence in order to determine the commensurate punishment for the offender. The seriousness of an offence depends, apart from other things, also upon its harmfulness.

11. This Court in *Soman v. State of Kerala*: (2013) 11 SCC 382 observed thus: (SCC p. 393, para 27)

'27.1. Courts ought to base sentencing decisions on various different rationales — most prominent amongst which would be proportionality and deterrence.

27.2. The question of consequences of criminal action can be relevant from both a proportionality and deterrence standpoint.

27.3. Insofar as proportionality is concerned, the sentence must be commensurate with the seriousness or gravity of the offence.

27.4. One of the factors relevant for judging seriousness of the offence is the consequences resulting from it.

27.5. Unintended consequences/harm may still be properly attributed to the offender if they were reasonably foreseeable. In case of illicit and underground manufacture of liquor, the chances of toxicity are so high that not

only its manufacturer but the distributor and the retail vendor would know its likely risks to the consumer. Hence, even though any harm to the consumer might not be directly intended, some aggravated culpability must attach if the consumer suffers some grievous hurt or dies as result of consuming the spurious liquor.'

12. The same is the verdict of this Court in *Alister Anthony Pareira v. State of Maharashtra* (2012) 2 SCC 648 wherein it is observed thus: (SCC p. 674, para 84)

'84. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.'

13. From the aforementioned observations, it is clear that the principle governing the imposition of punishment will depend upon the facts and circumstances of each case. However, the sentence should be appropriate, adequate, just, proportionate and commensurate with the nature and gravity of the crime and the manner in which the crime is committed. The gravity of the crime, motive for the crime, nature of the crime and all other attending circumstances have to be borne in mind while imposing the sentence. The court cannot afford to be casual while imposing the sentence, inasmuch as both the crime and the criminal are equally important in the sentencing process. The courts must see that the public does not lose confidence in the judicial system. Imposing inadequate sentences will do more harm to the justice system and may lead to a state where the victim loses confidence in the judicial system and resorts to private vengeance."

11.2. In *Udham*: (2019) 10 SCC 300, in paras 11 to 13, it is observed and held as under: (SCC p. 303)

"11. We are of the opinion that a large number of cases are being filed before this Court, due to insufficient or wrong sentencing undertaken by the courts below. We have time and again cautioned against the cavalier manner in which sentencing is dealt in certain cases. There is no gainsaying that the aspect of sentencing should not be taken for granted, as this part of Criminal Justice System has determinative impact on the society. In light of the same, we are of the opinion that we need to provide further clarity on the same.

12. Sentencing for crimes has to be analysed on the touchstone of three tests viz. crime test, criminal test and comparative proportionality test. Crime test involves factors like extent of planning, choice of weapon, modus of crime, disposal modus (if any), role of the accused, anti-social or abhorrent character of the crime, state of victim. Criminal test involves assessment of factors such as age of the criminal, gender of the criminal, economic conditions or social background of the criminal, motivation for crime, availability of defence, state of mind, instigation by the deceased or any one from the deceased group, adequately represented in the trial, disagreement by a Judge in the appeal process, repentance, possibility of reformation, prior criminal record (not to take pending cases) and any other relevant factor (not an exhaustive list).

13. Additionally, we may note that under the crime test, seriousness needs to be ascertained. The seriousness of the crime may be ascertained by (i) bodily integrity of the victim; (ii) loss of material support or amenity; (iii) extent of humiliation; and (iv) privacy breach." In the said decision, this Court again cautioned against the cavalier manner in which sentencing is dealt with in certain cases.

11.3. In Satish Kumar Jayanti Lal Dabgar: (2015) 7 SCC 359, this Court has observed and held that the purpose and justification behind sentencing is not only retribution, incapacitation, rehabilitation but deterrence as well."

17. From the aforesaid principle of law it appears that in sentencing for crimes 3 tests are to be taken into consideration namely crime test, criminal test and comparative proportionality test. Crime test involves factors like extent of

planning, choice of weapon, modus of crime, disposal modus, role of the accused, anti-social character of crime, state of mind. Criminal test involves assessment of factors such as age of the criminal, gender of the criminal, economic conditions or social background of the criminal, motivation for crime, availability of defence, state of mind, instigation by the deceased or any one from the deceased group, adequately represented in the trial, disagreement by a Judge in the appeal process, repentance, possibility of reformation, prior criminal record etc. In addition to that seriousness of the crime may be ascertained by (i) bodily integrity of the victim; (ii) loss of material support or amenity; (iii) extent of humiliation; and (iv) privacy breach.

18. In the given case on perusal of the record of the Learned Trial Court below it appears that the following lacunas of the prosecution were as follows:-

(i) Delay in lodging the FIR.

(ii) No weapon of offence was seized by IO during investigation or no explanation was there from the side of prosecution as to why the same was not seized or produced.

(iii) PW-6 in course of his cross-examination stated that PW-3 sustained injury by falling from height not due to the assault.

(iv) No independent witnesses could produce by the prosecution.

(v) Previous enmity amongst the rival parties.

19. In course of hearing of argument Learned P.P. failed to give any satisfactory explanation of the aforesaid loopholes. But from the evidence on record of the prosecution and also from the cross-examination by the accused persons to the witnesses of the prosecution it appears to this court that they have failed to discharge their burden or they have failed to discredit the witnesses of the prosecution regarding commission of offence of house-trespass and also regarding voluntarily causing hurt to the victim of this case on the alleged day of incident.

20. Situated thus, although the Learned Trial Court found the respondent-accused persons to be guilty for the alleged charges punishable under Section 326/324 of IPC, but in absence of cogent evidence on record, in my considered view, Learned Appellate Court rightly modified the sentence and converted the sentence under Section 323/448 of IPC against the respondents.

21. So, after hearing both the sides this Court also does not find any scope to alter the conviction of sentence awarded by the Learned Appellate Court. However, regarding imposition of punishment, it appears that the Learned First Appellate Court

has taken lenient view at the time of passing of sentence to the respondent-accused persons namely, Md. Gias Uddin, Md. Rasel Uddin, Mst. Parbin Neecha and Mst. Kabutar Neecha which in my considered view Learned Appellate Court failed to appreciate properly.

22. It was submitted by the Learned Counsel for the respondent-accused persons that the fine money as awarded by the Appellate Court has already been deposited by the respondent-accused persons before the concerned Court. So considering the nature and gravity of the offence and also the nature of allegation, it appears to this Court that for the ends of justice the sentence awarded by the Appellate Court be modified.

23. In the result, the judgment and order of conviction and sentence delivered by Learned Additional Sessions Judge, North Tripura, Dharmanagar dated 15.12.2023 in connection with CrI. A. No.07 of 2023 is modified to the extent that the respondent-accused persons Md. Gias Uddin and Md. Rasel Uddin in addition to fine of Rs.1000/- each for the offences punishable under Section 448/323 of IPC also shall suffer Simple Imprisonment for 7 days. No imprisonment is imposed upon the rest two other convicts namely Mst. Parbin Neecha and Mst. Kabutar Neecha being women and they will be discharged in the event of their deposit of fine money for an amount of Rs.1000/- each for the offences punishable under

Section 448/323 of IPC as ordered by the Learned Additional Sessions Judge by the said judgment and order. The convicts Md. Gias Uddin and Md. Rasel Uddin be asked to surrender before the Learned Court below on or before 10.03.2025 to suffer the sentence and learned Trial Court shall issue order of imprisonment accordingly. Thus, the appeal is disposed of.

Send down the LCRs along with a copy of judgment/order immediately.

A copy of this judgment/order be supplied to Learned P.P. for the appellant and also a copy of this judgment/order be supplied to Learned Counsel for the respondent-accused persons for information and compliance.

Pending application, if any, stands disposed of.

JUDGE

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Date: 2025.03.11
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