

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A(J) NO.40 OF 2024**

Sri Basudeb Jamatia

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

Versus

The State of Tripura.

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

For the Appellant(s) : Mr. Arjun Acharjee, Advocate.

For the Respondent(s) : Mr. Raju Datta, P.P.
Mr. R. Saha, Addl. P.P.

Date of hearing and delivery of
Judgment & Order : 15.05.2025.

Whether fit for reporting : YES/NO.

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
J U D G M E N T & O R D E R (O R A L)**

This appeal has been filed under Section 374 of the Cr.P.C. against the impugned Judgment of conviction and sentence dated 29.08.2023 and 31.08.2023, passed by the Learned Additional Sessions Judge, Gomati Judicial District, Udaipur, in Case No. S.T(T-1) 12/2022, whereby and whereunder the appellant has been convicted under Sections 447/307 of the IPC and Sections 25(1B)/27(1) of the Arms Act.

2. The facts of the case, in brief, are that the informant, namely Shri Biroj Mohan Jamatia, S/o Late Trishul

Kumar Jamatia of Daluma, P.S. Birganj, District: Gomati, Tripura, lodged an ejahar on 05.11.2020, alleging *inter alia* that on the night of 04.11.2020 at around 8:30 PM, the accused person, namely Basudeb Jamatia, committed criminal trespass into the informant's house. After using filthy language, he kicked the door of the informant's house and then shot at the informant with the intent to kill him. The informant somehow managed to escape the bullet. He further alleged that the accused also threatened him with dire consequences.

3. On the following day, the victim lodged an ejahar with Birganj Police Station. The police received the ejahar on 05.11.2020 at around 16:10 hours and registered it as Birganj P.S. Case No. 2020BRG060 under Sections 448/307/506 of the IPC and Section 27 of the Arms Act. The case was endorsed to SI of Police, Badal Laskar, for investigation. Cognizance of the offence was accordingly taken by the Court, and prosecution papers were supplied to the accused persons.

4. Charges were framed against the accused persons, namely Shri Basudeb Jamatia and Shri Deb Charan Jamatia. The contents of the charges were read over and explained to them, to which they pleaded not guilty and opted to stand trial. A total of sixteen witnesses were examined by the

prosecution to prove the charges. After the prosecution evidence was closed, the accused persons were examined under Section 313 of the Cr.P.C. regarding the incriminating materials against them. They pleaded total denial and false implication but declined to adduce any evidence in defence.

5. The learned Trial Court framed the following points for discussion and decision:

POINTS FOR DECISION:

1) Whether the accused person namely Basudeb Jamatia on or about 04.11.2020 at about 08:30 pm at Duluma, Purba Tilla, under PS Birganj, District Gomati, Tripura committed house trespass by entering into the building of the informant namely Shri Biraj Mohan Jamatia which used as a human dwelling with the intent to commit an offence punishable with imprisonment for life, to wit, attempt to commit murder of the informant by a fire arms and thereby committed an offence punishable under Section 450 of IPC;

(11) Whether the above named accused person on the same date, time and place did an act, to wit, shot was fired by an arms with such intention or knowledge and under such circumstances that if by that act he had caused the death of the informant namely Shri Biraj Mohan Jamatia, he would have been guilty of murder and thereby accused committed an offence punishable under Section 307 of IPC;

(III) Whether the above named accused person on the same date, time and place committed criminal intimidation by threatening Shri Biraj Mohan Jamatia with injury to his person with intent to cause alarm to the said Shri Biraj Mohan Jamatia and thereby committed an offence punishable under Section 506 of IPC;

(IV) Whether the above named accused person on the same date, time and place acquired in his possession or carried prohibited arms in contravention of Section 7 of the Arms Act,

1959 and thereby committed an offence punishable under Section 25(1-A) of the Arms Act, 1959;

(V) Whether the above named accused person on the same date, time and place used prohibited arms in contravention of Section 7 of the Arms Act, 1959 and thereby committed an offence punishable under Section 27(2) of the Arms Act, 1959;

6. After hearing arguments from both sides, the learned Trial Court below found the appellant guilty. Accordingly, convicted the appellant herein as stated herein above.

7. Being highly aggrieved and dissatisfied with the impugned judgment of conviction and sentence dated 29.08.2023 and 31.08.2023 passed by the learned Additional Sessions Judge, Gomati Judicial District, Udaipur in Case No. S.T (T-1) 12/2022, the appellant has preferred the present appeal seeking to set aside the impugned Judgment.

8. Heard Mr. A. Acharjee, learned counsel appearing for the appellant, and Mr. R. Datta, learned Public Prosecutor, assisted by Mr. R. Saha, learned Additional Public Prosecutor, appearing for the respondent-State.

9. Mr. Acharjee, learned counsel appearing for the appellant submitted that there are two accused persons in the present case and two pistols were allegedly seized from them. However, P.W.-9 and P.W.-10 have stated that the pistols were seized from villagers, thereby creating a contradiction in the

prosecution's version regarding the seizure. Learned counsel also submitted that fingerprints were not collected from the seized weapons, and there is no expert opinion on the same issue. He also contended that no injuries were sustained by anyone during the alleged incident. Thereafter, learned counsel referred to paragraph 39 of the impugned judgment, which states that the period of detention undergone by the convict from 25.03.2021 till the date of sentencing shall be set off as per the provisions of Section 428 of the Criminal Procedure Code and submitted that that the appellant has already suffered imprisonment for a period of four years and in consideration with his argument, the same be reduced to the period already undergone in custody.

10. The learned Public Prosecutor vehemently opposed the appeal, submitting that the petitioner does not deserve any relief and should undergo the sentence as imposed by the Trial Court. He prayed for dismissal of the appeal.

11. Heard both sides and perused the evidence on record.

12. As submitted by the learned counsel appearing for appellant, it is observed from the record that the appellant was sentenced to five years of imprisonment and he has already undergone approximately four years in custody.

Paragraph 39 of the impugned Judgment confirms that the detention period from 25.03.2021 until sentencing shall be set off.

13. Upon consideration of the above facts, and noting that there is no prior record of criminal activity against the appellant and that no injuries were sustained during the incident, and further considering that the seizure and possession of weapons and the appellant's fingerprints on the weapon were not proven beyond reasonable doubt, this Court is of the opinion that the ends of justice would be served if the punishment of 5(five) years as given by the Court below to the appellant herein be reduced to extend he has already undergone in custody. Accordingly, the same is ordered. The appellant is directed to be released forthwith, if not required in any other case.

14. With the above observation and direction, this present appeal stands disposed of. As a sequel, stay granted, if any stands vacated. Pending application(s), if any, also stand closed.

JUDGE

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